1865

A

DIGEST

OF THE

LAWS of ENGLAND.

By the Right Honourable

Sir JOHN COMYNS, Knight;

Late Lord Chief Baron of His Majesty's Court of Exchequer.

Continued down to the present Time,

By a GENTLEMAN of the INNER TEMPLE.

VOL. V.

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MDCLXXX.

EXPLANATIONS.

A.

Abr. Ca.	Abridgment of Cases in Equity.
Acc. or Ag. or Agr.	Accord, or Agreed.
Adj.	Adjudged: Sometimes Adjourned.
Adm.	Admitted.
Alte and Pofs.	References to Divisions and Subdivisions of the same Title.
Anp. H. Ter.	See Falle's Account of Jerfey, (printed 1694) chap. 1. p. 5.—chap. 3. p. 89, 97, 98.—chap. 4. p. 102.—chap. 7. p. 201, &c. King John's Conftitutions.
Arg. in C. R.	Argument in a Chancery Reports on the Jurifdiction of the Chancery.
Aff.	Liber Affifarum. The References by Placita.
Aft. Ent.	Afton's Entries.
Ayl. Int.	Aylife's Introduction to his Parergon. Edit. 1726.
Ayl. or Ayl. Par. or Dr. Ayliff.	Aylife's ancient and prefent State of the University of Oxford.

B.

B. or C. B.	Common Bench, or Common Pleas.
B. R.	King's Bench.
B. Tr.	Bifhop's Trial.
Bac. H. Ld.	Bacon's Life of H. 7.
Bend.	Bendloe's Reports; Sometimes referred to by Plaifance, Sometimes by Page, when the former is put before the Figure.
Bl. or Bl. Com. or Bl. Com.	Blount's Law Dictionary.
Bo. R. Act.	Booth of Real Actions.
Br. Jud.	Brownlow's Brevia Judicialia. Edit. 1666.
Bra. Treat. de Bp's.	Dr. Brady's Hiftorical Treatife of Cities and Boroughs.
Brad. or Bra.	Dr. Brady's compleat Hiftory of England. Fol. Edit. 1685.
Bro.	Brooke's Abridgment.
Bro. Ent. or Brow. Ent.	Brown's Entries.
Bro. R.	Brownlow Redivivus.
Bro. N. M. or Bro. Mod.	Brown's Vade Mecum.
Brownl. or 1 & 2 Brow.	Brownlow's Reports.
Brown. Ent.	Brownlow's Entries.
Bur. H.	Burnett's Hiftory of the Reformation.
B. & R.	Cafes in the King's Bench in the Time of Lord Hardwicke.
B. M.	Burrow's Reports in the Time of Lord Mansfield.
B. S. C.	Burrow's Settlement Cafes.

C.

C. B.	Common Bench, or Common Pleas.
C. Ca.	Chancery Cafes. Edit. 1723.
C. Ca. t. H. 6.	2 Vol. of Cafes in Chancery, or Select Cafes in Chancery. Contains the D. of Norf. Cafe.

EXPLANATIONS.

A.

Abr. Ca.	Abridgment of Caſes in Equity.
Acc. or *Ag.* or *Agr.*	Accord, or Agreed.
Adj.	Adjudged: Sometimes Adjourned.
Adm.	Admitted.
Ante and *Poſt.*	References to Diviſions and Subdiviſions of the ſame Title.
App. H. Jer.	See Falle's Account of Jerſey, (printed 1694) chap. 1. p. 5.—chap. 3. p. 89, 97, 98.—chap. 4. p. 102.—chap. 7. p. 201, &c. King John's Conſtitutions.
Arg. 1 *Ch. R.*	Argument in 1 Chancery Reports on the Juriſdiction of the Chancery.
Aſſ.	Liber Aſſiſarum. The References by Placita.
Aſt. Ent.	Aſton's Entries.
Ayl. Int.	Ayliffe's Introduction to his Parergon. Edit. 1726.
Ayl. or *Ayl. Hiſt.* or *Dr. Ayliff.*	Ayliffe's ancient and preſent State of the Univerſity of Oxford.

B.

B. or *C. B.*	Common Bench, or Common Pleas.
B. R.	King's Bench.
B. Tr.	Biſhop's Trial.
Bac. H. 7.	Lord Bacon's Life of H. 7.
Bend.	Benloe's Reports; Sometimes referred to by *Placitum*, ſometimes by *Page*; when the former, it has *pl.* before the Figure.
Bl. or *Bl. Nom.* or *Blo. Nom.*	Blount's Law Dictionary.
Bo. R. Act.	Booth of Real Actions.
Br. Jud.	Brownlow's Brevia Judicialia. Edit. 1662.
Bra. Treat. de Burghs.	Dr. Brady's Hiſtorical Treatiſe of Cities and Boroughs.
Brad. or *Bra.*	Dr. Brady's compleat Hiſtory of England. Fol. Edit. 1685.
Bro.	Brooke's Abridgment.
Bro. Ent. or *Brow. Ent.*	Brown's Entries.
Bro. R.	Brownlow Redivivus.
Bro. V. M. or *Bro. Vad.*	Brown's Vade Mecum.
Brownl. or 1 & 2 *Brow.*	Brownlow's Reports.
Brownl. Ent.	Brownlow's Entries.
Bur. H.	Burnett's Hiſtory of the Reformation.
B. R. H.	Caſes in the King's Bench in the Time of Lord *Hardwicke*.
B. M.	*Burrow's* Reports in the Time of Lord *Manſfield*.
B. S. C.	*Burrow's* Settlement Caſes.

C.

C. B.	Common Bench, or Common Pleas.
Ca. Ch.	Caſes in Chancery. Edit. 1735.
3 *Ca. Ch.*	3d Vol. of Caſes in Chancery, or Select Caſes in Chancery: Contains the *D. of Norf.* Caſe.

Ca.

Ca. Eq.	Gilbert's Reports of Cases in Equity.
Cal.	Callis on Sewers. 4to. 1686.
Ca. Pa. or *Ca. Parl.*	Cases in Parliament.
Cart.	Carter's Reports.
Carth.	Carthew's Reports.
Chil.	Chillingworth.
1, 2 & 3 *Ch. R.*	Reports of Cases in Chancery in the Reigns of K. *Charles 1st, &c.* examined with the third Edit. *Folio* 1736, by the Pages of the *Octavo* Edit. which are there preserved in the Margin. [Note, 1 *Ch. R.* contains the *Earl of Oxford's Case*, and the *Argument on the Jurisdiction of the Chancery*, which last is described by *Arg.* 1 *Ch. R.*]
Ch. R. without a preceding Figure.	Chancery Reports, *tempore* Finch.
Cl. Ass.	Clerk's Assistant.
Clift.	Clift's Entries.
Cod. or *Cod. Ju. Eccl.*	Gibson's Codex.
Comp. Att. or *C. Att.*	Complete Attorney. Edition 1676 or 1695.
C. Sol. or *Comp. Sol.*	Complete Solicitor. 1695.
Const. Oth.	Constitutiones Othoni at the End of Lyndwood's Provinciale.
Cont.	Contra.
Cot. Abr.	Sir Robert Cotton's Abridgment of the Records.
Cot. Ab. Pref.	Preface to the above.
Crompt. Off. of Sheriff. or *Crompt.* or *Crompt. Just.*	Fitzherbert's Offices of Justices of Peace, *&c.* enlarged by Richard Crompton.
C. t. T.	Cases in the Time of Lord *Talbot*.

D.

D.	Dictum.—Sometimes a Letter of Reference to a Book.
D. of Norf.	Duke of Norfolk's Case in 3 Cases in Chancery, or, Select Cases in Chancery.
D. of Pl. or *D. of Pluralities.*	A Defence of Pluralities. 8vo. 1692.
D. & St.	Doctor and Student.
Dal.	Dallison's Reports.
Dalt.	Dalton's Justice. Edit. 1727.
Dalt. Sh.	Dalton's Office of Sheriff.
Dan.	Danvers's Abridgment.
De Jure M.	Molloy de Jure Maritimo. 3d Edit. 1682, or 5th Edit. 1701.
Degs.	Degge's Parson's Counsellor. Edit. 1703.
D'Ew. or *D'Ewes.*	Sir Simon D'Ewe's Journals.
Dod. Nob.	Honour's Pedigree, or the several Fountains of Gentry, &c. by Sir John Doderidge. 1657.
Dub.	Dubitatur.
Dugd. O. J. or *Or. J.* or *Jud.*	Dugdale's Origines Juridiciales.
Dugd. Sum.	Dugdale's Summons to Parliament.
Duke.	Duke's Law of Charitable Uses.
Dy.	Dyer's Reports. Edit. 1688.

E.

Eq. Ab. or *Eq. Abr.* or *Eq. Ca. Ab.*	Abridgment of Cases in Equity.

Eq. Ca. or *Eq. R.*	Gilbert's Reports of Caſes in Equity, 2d Edit.
Eq. Ca.	Sometimes Gilbert's as above.——Sometimes the Second or Equity Part of 2 *Mod. Ca.* (Modern Caſes in Law and Equity;) but when the latter is meant, it is markt in the Margin.
E. of Cov.	Earl of Coventry's Caſe at the End of Francis's Maxims of Equity.
E. of Oxford.	Earl of Oxford's Caſe, 1 *Ch. R.*
Eſſay for Amendment of the Coin.	By William Lowndes. 1695.
	F.
F. N. B.	Fitzherbert's Natura Brevium. The Pages according to the old Editions.
F,g, or Fitzg.	Fitz-Gibbon's Reports.
Fl.	Fleta.
Finch Ch. R.	Chancery Reports *tempore* Finch.
Fitz. or *F.*	Fitzherbert's Abridgment.
Forſt.	Forſter's Digeſt of the Laws relating to the Cuſtoms, &c.
Fort.	Forteſcue de Laudibus Legum Angliæ.
Fox M.	Fox's Martyrology.
Fran. or *Fra.*	Francis's Maxims of Equity.
Fra. E. of Cov.	Earl of Coventry's Caſe at the End of Francis's Maxims of Equity.
	G.
G. 2. with a Figure preceding, or, *Temp. G. 2.*	Reports of Caſes in Chancery and the King's Bench in the 4th, 5th, 6th and 7th Years of *K. Geo.* 2d.
Godb.	Godbolt's Reports.
Gol. or *Goldſ.*	Gouldſborough's Reports.
Gro. de j. b. & p.	Grotius de Jure Belli & Pacis.
	H.
H. I. P. or *Ha. I. P.* or *Hal. I. P. or H. Parl.* or *Ha. Parl.*	Sir Matthew Hale's Original Inſtitution Power and Juriſdiction of Parliaments.
Hale Sheriff's Accounts.	Sir Matthew Hale's Treatiſe of Sheriff's Accounts. Edit. 1683.
H. P. C. or *H.*	Hale's Pleas of the Crown. 8vo.
Han. Ent.	Hanſard's Entries.
Hanſ. Introd. or *Int.* or *Han. Int.*	Hanſard's Introduction to his Book of Entries.
Hard.	Hardres.
Hiſt. de C. L.	Hale's Hiſtory of the Common Law.
	J.
Jan. Angl.	Jani Anglorum Facies nova.
Jen. (S. L.)	Sir Leoline Jenkins. (The References are to his Argument on the Juriſdiction of the Admiralty, and his Charges at the Admiralty Seſſions.)
Jenk.	Jenkins's Centuries.
Infra and *Supra.*	References to the ſame Diviſion or Subdiviſion.
Jon.	Sir William Jones's Reports.
2 Jon.	Sir Thomas Jones's Reports.

K.

Kel. or *Keil.*	Keilwey's Reports.
Kelt.	Kelynge's Reports.
Ken. Imp.	Kennet of Impropriations.
Kit.	Kitchin of Courts. French Edition 1623.

L.

Lamb.	Lambard's Juſtice. Edit. 1607.
Lamb. Ch. or *Lamb. Off. Ch.*	Lambard's Duties of Conſtable, Churchwarden, *&c.* uſually bound up with Lambard's Juſtice.
Lut. Ent.	Lutwyche's Entries.
Lind. or *Lind. Off. Arch.*	Lyndwood's Provinciale. Edition. 1679.
Lit.	Littleton's Reports.
Lit. with *S.*	Littleton's Tenures; *S.* for Section.

M.

Ma.	Malyne's Lex Mercatoria. Folio Edition, 1686.
Mad.	Madox's Hiſtory of the Exchequer.
Mad. Form.	Madox's Formulare Anglicanum: refers to the N. of the Formula.
Mad. Form. Int.	The Diſſertation prefixed to Madox's Formulare Anglicanum: refers to the Page.
Manw.	Manwood's Foreſt Law. 3d Edition.
Mar.	March's Reports. When the Reference is mark't *pl.* it is to the Placita; without that, to the Page.
Mars.	Advice concerning Bills of Exchange, by Marius. Folio Edit. 1684.
Mills.	Rules and Orders of *C. B.* by Milles, printed 1732. or Edition 1729.
Mod. Ca.	6th Modern Reports.
2 Mod. Ca.	Modern Caſes in Law and Equity. 1ſt Part.
Mod. Int.	Brown's Modus Intrandi.
2 Mod. Int.	Same Book. 2d Part.
Moll. de Jur. M.	Molloy de Jure Maritimo. 3d Edition 1682, or 5th Edition 1701.
M. P. Ex.	Modern Practice of the Court of Exchequer. 1731.

N.

N. N.	Uncertain what Book this refers to.
Nom. or *Bl.* or *Bl. Nom.* or *Blo. Nom.*	Blount's Law Dictionary.

O.

Off. Br.	Officina Brevium.
Off. Ex.	Wentworth's Office of an Executor. Edition 1689.
Ord. Cla.	Lord Clarendon and Sir Harbottle Grimſtone's Orders of the Court of Chancery
Ord. and Rules in Exch.	Orders and Rules of the Court of Exchequer. Edit. 1729.

P.

P. W.	Peere Williams's Reports.
Perk.	Perkins's profitable Book treating of the Laws of England.
Pl. or *Plo.* or *Pl. Com.*	Plowden's Commentaries.

Poſt

Poſt and *Ante*.	References to Diviſions and Subdiviſions of the ſame Title.
	Precedents in Chancery.
Pr. Lond. or *Priv. Lond.*	Privilegia Londini. 1ſt Edition.
Pr. R. or *Pr. Reg.* / *Pr.* or *Sti. Pr. Reg.*	Style's Practical Regiſter. 2d Edition.
Pr. St.	Private Statute.
Pref. Cot. Abr.	The Preface to Sir Robert Cotton's Abridgment of the Records.

Q.

Quo W. or *Quo Warr.*	The Caſe of the *Quo Warranto* againſt the City of *London*.

R.

R.	Reſolved.
Raſt. Ab.	Raſtal's Great Abridgment of the Statutes.
Raſt. Ent.	Raſtal's Entries.
Reg.	Regiſtrum Brevium.
Reg Jud.	Regiſtrum Judiciale.
Reg Or.	Regiſtrum Brevium Originalium.
Reg. Pl.	Regula Placitandi.
Rob. Ent.	Robinſon's Entries.
Rol. with *l.* or a Letter, as *A.*	Roll's Abridgment; *l.* for Line; Letter for Diviſion.
Rol. without *l.* or Letter.	Roll's Reports.
Rules and Orders B. R.	Rules and Orders of the Court of King's Bench. Edit. 1729.
Rules and Orders C. B.	Rules and Orders of the Court of Common Pleas. Edit. 1729 or 1735.
Rules and Orders of the Court of Chancery.	Edit. 1739.
Ruſh. or *Ruſhw.*	Ruſhworth's Collections. Edit. 1659 or 1680.
Ry. F.	Rymer's Fœdera.

S.

Sand.	Saunders's Reports.
Sand. Obſ. on St. 22 *Car.* 2.	Saunders's Obſervations on the *St.* 22 *Car.* 2. 1. to ſuppreſs Conventicles.
Seld.	Selden. Edit. 1726.
Seld. de Dec.	Selden's Hiſtory of Tithes. 4to. 1618.
Seld. J. P. or *Jud. Parl.*	Selden's Judicature of Parliament. The Reference to the 3d Vol. is of the Folio Edit. of Selden's Works 1726, in three Volumes, uſually bound in ſix.
Seld Off. Ch. or, *Canc.* or *Chan.*	Selden's Diſcourſe on the Office of Chancellor. Edit. 1726.
Seld. Mare Cl.	Selden's Mare Clauſum.
Semb.	Semble; Seems.
Sh. Acc.	Sir Matthew Hale's Treatiſe of Sheriff's Accounts. Edit. 1683.
Som.	Somner of Gavelkind.
L^d. Som. Arg^t.	Lord Somers's Argument on the Banker's Caſe.
Spel. Gloſſ. or *Sp. Gloſſ.*	Spelman's Gloſſary. 1ſt Edition 1626.
St. Eccl. Caſes.	Stillingfleet's Eccleſiaſtical Caſes.
St. or *St. P. C.* or *Sta.* or *Sta. P. C.* or *Stamf. P. C.*	Staundford's Pleas of the Crown.
St. Præ. R. or *St. Pr.*	Staundford's Prærogativa Regis.

Sti.

Sti.	Styles's Reports.
Sti. Pr. Reg.	Style's Practical Regiſter. 2d Edit.
Supra and *Infra.*	Reference to the ſame Diviſion or Subdiviſion.

T.

Temp. G. 2.	Reports of Caſes in Chancery and the King's Bench in the 4th, 5th, 6th and 7th Years of King *Geo.* 2d.
Th. Br.	Theſaurus Brevium.
Th. D. or *Th. Dig.*	Theolall's Digeſt.
Tho. or *Tho. Ent.*	Thompſon's Entries.
Tot.	Tothill's Tranſactions of the High Court of Chancery. Edit. 1671.
Townſ.d J. or *Townſ.d Jud.* or *T. Jud.*	Townſend's 2d Book of Judgments.
Tr. Eq.	Treatiſe of Equity.
1 *Tr.*	State Trials compared with 2d Edit. 1730.

V.

Vad. M. or *Bro. V. M.*	Brown's Vade Mecum.
Vid. Ent.	Vidian's Entries.
Vid. Introd. or *Vid. Int.*	Vidian's Introduction to his Book of Entries.

W.

W. 1.—*W.* 2.	The Statutes of Weſtminſter, 1ſt and 2d.
Wat.	Watſon's Clergyman's Law. 8vo.
Went. Off. Ext.	Wentworth's Office of an Executor. Edition 1689.
Weſt. or *Weſt. Chan.* or *Weſt. Symb.*	Weſt's Symboleography of the Chancery, &c.
Winch.	Winch's Reports.
Win. Ent.	Winch's Entries. Edit. 1680.
Wri. Int.	Wright's Introduction to the Law of Tenures.

Y.

Year Books.	Compared with the Edition of 1679, 1680.

When the Page of a Book is included in a Parentheſis, thus, (466), that Page is twice numbred in the Book cited.

Quotations not above ſpecified are ſuch as are conceived to be obvious, and the References are, in general, to the common Editions of the Books.

PLEADER.

(A) The Advantage of Pleading.

[THE ſubſtantial Rules of Pleading are founded in ſtrong Senſe, and in the ſoundeſt and cloſeſt Logic; and ſo appear, when well underſtood and explained; though, by being miſunderſtood and miſapplied, they are often made uſe of as Inſtruments of Chicane. *D. per Ld. Mansfield. Robinſon* v. *Raley, P.* 30 *G.* 2. 1 *B. M.* 316.]

It is one of the moſt honourable, laudable, and profitable Things in our Law, to have the Knowledge of well pleading in Actions Real and Perſonal. *Lit. Sect.* 534.

Plea (from the Saxon *Pleo* or *Pleoh*, i. e. *Juris actio*) comprehends all that every Party to the Action alledges in Court. *Blo. Nom. Lex. Verb. Plea.*

And of this Rolls are made.

Antiently, the Writ was entred on a Roll, and the Tenant or Defendant ſometimes might appear at the Day given by the Roll. 1 *Sal.* 64. *Vide Poſt*, (B. 6.)

Now there are only, The Imparlance-Roll, on which are entred the Declaration and Imparlance.

The Plea Roll.

By *Rule, M.* 1654. in *C. B.* The Rolls of *Eaſter* Term ſhall be brought in to the Prothonotary entred and doggetted on or before the firſt Day of *Trinity* Term, and the Rolls of every other Term, ten Days before the Eſſoin Day of the next Term, on Pain of 10*s.* for each Roll wanting; the Rolls of *Eaſter* Term ſhall be delivered by the Prothonotary to the Clerk of the Warrants within ſix Days, and of other Terms before the Eſſoin Day, and the Clerk of the Warrants in five Days ſhall deliver them to the Clerk of the Eſſoins. (*Vide Rules and Orders of C. B.* 10, 11.)

By *Rule P.* 34 *Car.* 2. The Rolls of *Eaſter* Term ſhall be brought in by the firſt Day of *Trinity* Term, thoſe of *Trinity* Term by *Michaelmas* Day, thoſe of *Michaelmas* Term by the 6th of *January*, and thoſe of *Hilary* Term, four Days before *Eaſter*. (*Vide Rules and Orders of C. B.* 85.)

By *Rule P.* 5 *W. & M.* The Rolls of *Eaſter* Term ſhall be brought in to the Clerk of the Eſſoins before *Trinity* Term, and of every other Term before the Eſſoin Day of the next Term. (*Vide Rules and Orders of C. B.* 113.)

And no Roll ought to be received *poſt Terminum*, without the Leave of the Court on Motion. 1 *Sal.* 88.

By *St.* 36 *Ed.* 3. 15. All Pleadings in the King's Courts, or any other, ſhall be debated and adjudged in *Engliſh*, and enrolled in *Latin*.

And *Latin* comprehends not only that which is allowed by Grammarians, but alſo Words of Signification well known to the Sages of the Law: As, *Meſſuagium, Toftum, Gardinum, &c.* 10 *Co.* 133. *a.*

So, Words newly invented with an *Anglicè*. 10 *Co.* 133. *a. Vide Abatement*, (H. 2.)—*Action upon the Caſe*, (G. 4.)—*Amendment*, (D. 2.)—*Obligation*, (B. 3, 5.)

But an Addition in an Indictment, *&c.* by *Engliſh* Words will be well. 1 *Sid.* 101. *Vide Indictment*, (G. 1.)

So a Return of a Proceeding, in *Engliſh*, on a Writ of Error to *Berwick*, where the Entry ought to be in *Engliſh*, is good. *R.* 1 *Sal.* 269.

And by the *St.* 4 *G.* 2. 26. All Writs, Proceſs, and Returns, and Proceeding thereon, all Pleadings, Rules, Indictments, Informations, Inquiſitions, Verdicts, Records, Patents, *&c.* Bonds, Fines, *&c.* and all Proceedings relating thereto, *&c.* in Courts Leet, Courts Baron, or any Court of Juſtice in *England*, or the *Exchequer* in *Scotland*, or which concern the Adminiſtration of Juſtice, *&c.* ſhall be in *Engliſh* only, and written in a legible Hand, cloſe, in Words at length, and not abbreviated, on Pain of 50*l.*

So, by the *St.* 5 *G.* 2. 27. and 6 *G.* 2. 14. In Actions under 10*l.* or under or above in *Wales*.

But theſe Acts extend not to the uſual Method of writing Numbers by Figures, common Abbreviations, Names of Writs, or technical Words. *Vide the St.* 6 *Geo.* 2. 14. *Sect.* 5.

(B) Appearance.

(B. 1.) What ſhall be.

THE firſt Act of Parties in Court is, that the Defendant appears to the Proceſs againſt him.

And the Appearance is, when the Defendant ſhews himſelf in Court, in Perſon, or by his Attorney ready to anſwer to the Action.

And he ought to enter his Appearance by filing Common Bail, or Special Bail when it is required. *Pr. Reg.* 40.

When Special Bail ſhall be required, *Vide Bail*, (K. 4.)

And therefore, the Plaintiff cannot declare in *B. R.* 'till a *Committitur* of the Party is made, or Bail put in. 1 *Rol.* 581. *l.* 10.

Nor in *C. B.* till Bail is put in, or the Party is brought into Court by *Habeas Corpus*.

But by the *St.* 4 & 5 *W.* & *M.* 21. A Declaration may be delivered to a Priſoner or Gaoler, *&c.*

And by the *St.* 12 *Geo.* 29. Where the Cauſe of Action amounts not to 10*l.* on *Affidavit* of Proceſs being ſerved, if the Defendant appears not in four Days (by *St.* 5 *Geo.* 2. 27. in eight Days) after the Return, the Plaintiff may file Common Bail, and enter an Appearance, as if the Defendant had appeared.

So, if the Attorney for the Defendant accepts a Declaration from the Plaintiff's Attorney, it ſhall be an Appearance for the Defendant. *Pr. R.* 39.

If he undertakes that he will appear, after a Writ taken out, it ſhall be an Appearance. *Mod. Ca.* 42.

[If an Attorney has undertaken to appear, the Court will oblige him to do it, even though he had no Authority from the Defendant. *Lorymer* v. *Holliſter*, *P.* 12 *G.* *Str.* 693.]

But if the Tenant or Defendant be in Court, and ſays that he will not appear; this is not an Appearance. 1 *Rol.* 580. *l.* 15.

So, if the Tenant in an Aſſiſe makes Default, and another appears for him, as his Bailiff, and he comes into Court, and diſavows him to be his Bailiff, this is no Appearance; for he comes for another Purpoſe, *viz.* to diſavow his Bailiff. 1 *Rol.* 580. *l.* 20.

So, if the Attorney accepts the Declaration for the Defendant, *if he approves of it*; it ſhall not be an Appearance, if he afterwards ſends back the Declaration. *Pr. R.* 41.

So if, before the Writ iſſues, he undertakes that he will appear; it is not an Appearance, tho' the Writ be afterwards ſhewn to him. *Mod. Ca.* 42.

So, if he undertakes, after the Writ is ſued out, but afterwards refuſes, he ſhall be compellable to enter an Appearance, but it is no Appearance till it is entred. *Mod. Ca.* 86.

So

So it is not an Appearance, if it is not recorded; for, *whether he appeared, or not*, ought to be tried by the Record. *Bro. Default* 32. *R. Cro. El.* (466.) *per* 2 *J. Keilw.* 180.

[If a Man abroad enters into a Bond, conditioned for his Appearance in *B. R.* at his Arrival in *England*, to anſwer any Demand that may be made againſt him, by or on the Behalf of *A.* the Court, to prevent Forfeiture of his Bond, will admit his Appearance, and direct him to enter into Recognizance with Sureties to anſwer the Demands in the Condition. *A Black Merchant* v. *Dorrell*, *T.* 30 & 31 *G.* 2. 1 *B. M.* 398.]

In an Action againſt a Bailiff and Commonalty, it is not an Appearance, if the Bailiff appears without the Commonalty; for they are but one Corporation. 1 *Rol.* 582. *l.* 30.

Nor, in an Action againſt Huſband and Wife, if the Husband appears without the Wife, or *è Contra*. *Vide Poſt*, (B. 4, 10.)

[Appearance cures all Errors and Defects in Proceſs. *Barnes* 163, 167, 415, 424.]

(B. 2.) Where it ſhall be entred.

An Appearance on a *Capias* in *C. B.* ſhall be entred in the Filazer's Office, out of which it iſſued. *Compl. Att.* 31.

On an Attachment of Privilege it ſhall be entred in the Remembrance-Roll of the Prothonotary out of whoſe Office it iſſued. *Ibid.*

By the *St.* 5 & 6 *W. & M.* 21. *S.* 37. (and 9 & 10 *W.* 3. *c.* 25. *S.* 33.) The Defendant ſhall cauſe an Appearance or Common Bail to be entred or filed in eight Days after the Return of the Proceſs, on Pain of 5*l.* to the Plaintiff, for which Judgment ſhall be awarded immediately, and Execution taken out.

By the *St.* 4 & 5 *Ann.* 16. The Attorney for the Plaintiff or Demandant ſhall file his Warrant of Attorney the ſame Term he declares; and the Attorney for the Defendant or Tenant the ſame Term he pleads.

(B. 3.) How it ſhall be enforced.

If an Action be againſt an Officer of a Court, he ought to appear of Neceſſity, otherwiſe he ſhall be condemned; for he is always preſent in Court. 1 *Rol.* 580. *l.* 22. 8 *H.* 6. 16. *a.*

As, an Attorney; for being upon Record, he is always preſent in Court.

So, a Sheriff upon his Account. 1 *Rol.* 580. *l.* 25.

So a Man, who is a Priſoner in the ſame Court. 8 *H.* 6. 16. *Bro. Default* 36.

Otherwiſe, if he be a Priſoner in another Court. 1 *Rol.* 580. *l.* 29. And therefore, if ſuch a one be brought in by *Habeas Corpus*, there is no Occaſion for an Appearance. *Bro. Default* 33, 36.

[A Convict on an Act working no Forfeiture, ordered to be pardoned on Condition he tranſports himſelf, may on Motion be charged in Cuſtody in a Civil Action, but not held to Bail, nor have Execution againſt his Perſon; for that would prevent his performing the Condition of his Pardon. *Coffin* v. *Gunner*, *T.* 4 *G.* 2. *Str.* 873. *Ld. Raym.* 1572.]

[But the Court will not take Notice of the King's Intention to pardon, though ſignified by the Attorney-general. *Macdonald's Caſe*, 1747. *Foſter* 61.]

[A Priſoner, upon Conviction for a Libel, being in Contempt upon an Injunction in Chancery, may be charged with an Attachment, Attorney-general conſenting. *Baſket* v. *Rayner*, *M.* 9 *G.* 2. *B. R.* 170.]

[A Priſoner, on a Charge of Felony, may be charged with a *Latitat*. *Daintree* v. *Juſtice*, *H.* 9 *G.* 2. *B. R. H.* 190.]

By the *St.* 13 *Car.* 2. 2. *Seſſ.* 2. Any, having Cauſe of Perſonal Action againſt a Priſoner in the *Fleet*, may ſue forth his Original and have a *Habeas Corpus* directed to the Warden to bring up the Priſoner at a certain Day in Term before the Juſt. of *C. B.* and put in a Declaration on ſuch Original againſt the Priſoner

Priſoner preſent at Bar, who ſhall be bound to appear in Perſon or by Attorney, and if he does not plead on a Rule given to be out in eight Days after Appearance, Judgment by *Nihil dicit* ſhall be entred againſt him.

[If Defendant is regularly intitled to be ſuperſeded, (the Order for his being ſuperſeded having become abſolute two Days before the End of a preceding Term) yet is not actually ſuperſeded, but remains in Cuſtody of the Marſhal, and on the 5th Day of next Term, a Declaration is delivered to him at the Suit of another Plaintiff, he is well charged. *Hutchins* v. *Kenrick*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1048.]

[To charge a Defendant already in Cuſtody with a new Suit in Vacation-time, Plaintiff muſt file a Bill as of the preceding Term, and then deliver or leave a Copy of Declaration as of preceding Term, and make Affidavit of it; there is no Occaſion for *Habeas Corpus ad reſpondendum*. *Hills* v. *Kenrick*. *T.* 33 & 34 *G.* 2. 2 *B. M.* 1048.]

By the *St.* 4 & 5 *W.* & *M.* 21. If any be arreſted on any Writ out of the Courts at *Weſtminſter*, and detained for want of Sureties for his Appearance, the Plaintiff, before the End of the next Term, after ſuch Proceſs ſhall be returnable, may declare and cauſe a Copy of a Declaration to be delivered to the Priſoner or Gaoler in whoſe Cuſtody he is; and if the Priſoner does not appear and plead, the Plaintiff ſhall have Judgment, as if he had appeared and refuſed to plead.

By the *St.* 12 *Geo.* 29. If the Cauſe of Action amounts not to 10*l.* or in Inferior Courts to 40*s.* the Plaintiff ſhall not arreſt, but ſhall perſonally ſerve the Defendant with a Copy of the Proceſs, and if an Appearance be not entred in four Days after the Return of the Proceſs, on an *Affidavit* of Service filed, ſhall enter a Common Appearance and proceed as if the Defendant had appeared.

By the *St.* 5 *Geo.* 2. 27. If not entred in eight Days.

[Notice to appear muſt be given with all Proceſs ſerved. *Barnes* 404.]

[It muſt be given before Nine at Night. *Barnes* 310.]

[If the Notice is directed to Plaintiff, inſtead of Defendant, it is faulty; or if the Word *next* is omitted, or *next* inſerted inſtead of *Inſtant*. *Barnes* 306, 308, 310, 409, 411, 419.]

[This is exploded; and Notice is good without *Inſtant*, *next*, or *Year*. *Barnes* 425.]

[If there is no Notice ſubſcribed to the Copy of the Proceſs ſerved, it is irregular; but if Defendant's Attorney takes the Declaration out of the Office, and pays for it, it is a Waiver of the Irregularity. *Morgan* v. *Luckup*, *P.* 9 *G.* 2. *B. R. H.* 242.]

[If the Defendant's Name is not put to the Notice at the Bottom of *Latitat*, it is bad, and ſhall be quaſhed. *Behema* v. *James*, *T.* 18 *G.* 2. *Wilſ.* 104.]

[Notice on the Copy of Proceſs muſt be to appear on the *Eſſoin-day*, though a *Sunday*. *Barnes* 293, 294, 295.]

[If there is Variance between the Name in Proceſs and in Notice, Proceedings ſhall be ſtaid. *Barnes* 298.]

[Affidavit of Service muſt be made, or Proceedings will be ſtaid. *Barnes* 412.]

[If the Date is omitted, if it is to appear before the King's Juſtice, (inſtead of Juſtices) or not fifteen Days between *Teſte* and Return, Proceedings ſhall be ſtaid. *Barnes* 420, 426, 427.]

[It is not neceſſary to ſhew Defendant the original Writ, but only to deliver him a Copy. *Per Curiam*. *Worley* v. *Glover*, *M.* 4 *G.* 2. *Str.* 877. *Barnes* 302, 422.]

[If Defendant ſerved with Copy of Proceſs, demands to ſee the original Proceſs, and is refuſed it, it is not good Service. *Semb. Edgar* v. *Farmer*, *T.* 8 *G.* 2. *B. R. H.* 138. *Sed vide ante*, *Worley* v. *Glover*, *&c. contra*.]

[If on Defendant's not appearing to a Writ of *Eaſter* Term, Plaintiff files common Bail as of *Trinity* Term, the Cauſe is out of Court, and Judgment muſt be ſet aſide. *Edgar* v. *Farmer*, *T.* 8 *G.* 2. *B. R. H.* 138.]

[In Debt, if it is above 10*l.* there is no Occaſion to put the Notice to appear at the Bottom of the Proceſs, under the *Stat. G.* 2.]

[So if the Copy of *Latitat* ſerved is only to anſwer *A.* without ſaying in a Plea of Treſpaſs, or ſhewing any Cauſe of Action, and Defendant takes the Declaration out of the Office, it amounts to an Appearance, which is a Waiver of the Defect in the Proceſs. *Caſwall* v. *Martin*, *P.* 10 *G.* 2. *B. R. H.* 369.]

[But if the Plaintiff's Name is omitted in the Writ, Defendant may at any Time apply to ſet aſide Proceedings, for it is no Proceſs at all; otherwiſe, if Service of Writ is irregular only, for there he muſt apply as ſoon as poſſible after Notice. *Thompſon* v. *Browne*, *T.* 10 & 11 *G.* 2. *Andr.* 16.]

[If it is doubtful, whether the Place where Defendant was ſerved be in the County where Proceſs iſſued, or not, it ſhall be deemed good Service, eſpecially if Defendant promiſed to appear to any Proceſs. *Drew* v. *Marriott*, *T* 17 *G.* 2. *Wilſ.* 77.]

[Service of a Writ at any Time of the Return-day, though after the Court is riſen, is good. *Hall* v. *Gatton*, *H.* 2 *G.* 2. *Moſs* v. *Powel*, *T.* 11 & 12 *G.* 2. *Weyburn* v. *Neale*, *M.* 19 *G.* 2. *Maud* v. *Barnard*, *T.* 32 & 33 *G.* 2, 2 *B. M.* 812.]

[Service of meſne Proceſs on the Return-day is good in *C. B.* as in *B. R.* *General Rule*, *P.* 8 *G.* 3. 2 *Wilſ.* 372.]

[Copy of Proceſs put through Key-hole to Defendant who knows the Contents, good Service. *Barnes* 405.]

[Copy ſent by Letter, if Defendant takes it out and reads it, is good Service. *Barnes* 422.]

[Copy of Proceſs tendered to Defendant at his Houſe, and left there, is good Service. *Barnes* 278.]

[Service of Copy of Writ, *except what relates to other Defendants*, not good. *Barnes* 405.]

[If Proceſs is dated ſubſequent to Service, it is irregular. *Barnes* 408.]

[Service is good, though in a Liberty, and not by proper Officer; but the Party injured may bring Action. *Barnes* 404.]

[So if Attorney's Name is not to the Sheriff's Warrant, or to Copy of Proceſs. *Barnes* 407, 412, 414.]

[Yet afterwards, Attorney's Name not being to Copy of Proceſs, Proceedings ſtaid. *Barnes* 415.

[So if the Writ is not directed to the Sheriff of any County, (yet Advantage may be otherwiſe taken. *Semb.*) *Barnes* 404.]

[Service of Special Original is not ſufficient, it muſt be of Proceſs againſt the Perſon; or Plaintiff may have *Poné* and Diſtreſs on his Original. *Barnes* 407, 410.]

[Original once uſed (though improperly, as by ſerving Copy) cannot be afterwards uſed. *Barnes* 417.]

[Appearance entered by Plaintiff does not cure Proceſs being ſerved on a wrong Perſon. *Barnes* 406.]

[Proceſs directed to the Sheriff of *Kent* ſerved in the *Cinque-Ports* is bad; it ſhould be *teſtat. cap.* to the Conſtable of *Dover Caſtle*. *Barnes* 422.]

If a Man arreſted upon Proceſs is bailable and can find Surety, the Sheriff diſmiſſes him, if Common Bail is ſufficient, on the Undertaking of ſome Attorney of the ſame Court to appear for him; if Special Bail is required, the Sheriff takes a Bond with Surety for his Appearance at the Return of the Proceſs.

By the *St.* 13 *Car.* 2. 2. *Seſſ.* 2. The Sheriff ſhall not require a Bond above the Penalty of 40*l.* for Appearance upon an Arreſt or Proceſs out of *B. R.* or *C. B.* unleſs the Cauſe of Action be ſpecially expreſſed in the Writ.

After which Statute the Clauſe of (*Ac etiam billæ*) was inſerted in Proceſs out of *B. R.*

And afterwards, by Rule of Court before *North*, Ch. J. it was inſerted in Proceſs out of *C. B.* *Comp. Sol.* 67.

[*Ac etiam* to anſwer in a Plea of Trover, and for converting the Goods of Plaintiff; the Cauſe of Action is here ſufficiently expreſſed, to hold to Bail under 13 *C.* 2. *c.* 2. *Callaghan* v. *Harris*, *H.* 9 *G.* 3. 2 *Wilſ.* 392.]

If an Attorney of *B. R.* or *C. B.* accepts a Warrant, (or undertakes to appear, *Mod. Ca.* 86.) or ſubſcribes a Proceſs or Warrant to make an Appearance, and does not enter an Appearance accordingly, he ſhall be ſubject to an Attachment, or to be erazed out of the Roll, and the Party cannot countermand Appearance after Retainer. *Ord. Compl. Att.* 292, 293.

If the Party afterwards countermands the Warrant, the Attorney ſhall be compellable to enter an Appearance. *Pr. R.* 38.

But if there are ſeveral Defendants, the Attorney is bound only to appear for ſuch of them as give him Authority. *Pr. R.* 39. 1 *Sal.* 87.

If, upon an Arreſt, the Sheriff takes Surety for Appearance, and the Party does not appear, the Sheriff may be amerced, on a Rule being given to bring in the Body; and ſo *toties quoties*. *Comp. Att.* 311.

[The Sheriff takes Bail at his Peril; and, on the common Rule, he muſt either bring in the Body, or juſtify good Bail in Court. *Wolfe* v. *Collingwood*, *H.* 23 *G.* 2. 1 *Wilſ.* 262.]

[If the Sheriff brings Defendant in Perſon into Court, they commit him charged with the *cap. ad reſpond.* *Barnes* 392.]

[If Defendant in Cuſtody at the Suit of Plaintiff only, has a *Superſedeas*, Plaintiff cannot charge him with a new Declaration. *Barnes* 368.]

[If Defendant is in Cuſtody at Suit of ſeveral Plaintiffs, one may diſcontinue, pay Coſts, and ſerve Defendant in Cuſtody with common *Capias*, and Notice to appear, and for Want, appear, and ſign Judgment for Want of Plea. *Barnes* 392.]

But the uſual Way is to aſſign the Bail Bond to the Party. *Vide Bail*, (K. 5.)

And now, by the *St.* 4 & 5 *Ann.* 16. If, on an Arreſt by Proceſs from the Courts at *Weſtminſter*, the Sheriff, *&c.* takes Bail, he, at the Requeſt and Coſts of the Plaintiff ſhall aſſign to him the Bail Bond, *&c.* by indorſing it under his Hand and Seal in the Preſence of two Witneſſes, which may be done without Stamp, if ſtampt before put in Suit: And if ſuch Bond be forfeited, the Plaintiff may ſue it in his own Name, and the Court may, by Rule or Rules of Court, give ſuch Relief to the Plaintiff or Defendant in the original Action, or to the Bail, as is reaſonable; which Rule ſhall be in the Nature of a Defeazance to the Bail Bond.

But an Action upon the Caſe does not lie againſt the Sheriff for a falſe Return; for he is compellable to accept Bail by the *St.* 23 *H.* 6. 10. *R.* 2 *Sand.* 60. 1 *Sid.* 23, 439. *R.* 1 *Rol.* 92. *l.* 50. 807. *l.* 50. *R. Noy* 39.

If the Plaintiff does not take an Aſſignment of the Bail Bond, but proceeds, by Amerciament of the Sheriff, to enforce the Appearance of the Defendant, he ought to give 4*d.* to the Sheriff to make a Return of the Writ, and if he returns *Cepi Corpus*, or *Reddidit ſe*, he ſhall give a Rule to the Sheriff to have his Body on Pain of 40*s.* and if he has it not, he may have an *Habeas Corpus*, upon which the Sheriff can return nothing (if he has not the Body) but *Languidus in Priſonâ*, and then ſhall iſſue a *Duces tecum licet languidus*; if the Sheriff does not return the *Habeas Corpus*, he ſhall be amerced; and ſo *toties quoties*, and the Amerciaments may be eſtreated into the Crown Office, and from thence into the *Exchequer*. *Compl. Att.* 311. *Vide Bail*, (K. 5.)

But after the Eſtreat of the Amerciaments, they may be compounded or diſcharged, upon Motion in the *Exchequer*, and a Certificate of the Plaintiff's Attorney that the Debt is ſatisfied. 1 *Sal.* 54.

(B. 4.) In an Action againſt Huſband and Wife.

[Service of Huſband good for both, and Plaintiff may enter Appearance for both. *Barnes* 406, 412.]

In an Action againſt a Husband and Wife, if the Husband be taken on the *Capias* or Exigent out of *B. R.* he ſhall remain in Priſon till Bail given for himſelf and his Wife. 1 *Rol.* 583. *l.* 7. 20. 1 *Sal.* 115.

So, if he appears on the Exigent. 1 *Rol.* 583. *l.* 5. *R. Cro. El.* 370.

So, if he appears on the Original. 1 *Rol.* 583. *l.* 15.

So, if the Huſband is arreſted on a *Latitat*. 1 *Rol.* 583. *l.* 30. *Pr. Reg.* 66.

And if the Huſband be an Attorney, *&c.* he cannot appear in Perſon and put in Bail for his Wife, but he ought to put in Bail for himſelf and his Wife; for he ſhall not have Privilege in an Action againſt him and his Wife. *R.* 1 *Rol.* 580. *l.* 45. *Vide Attorny*, (B. 17.)

So, if the Action be againſt Huſband and Wife as Executrix. *R. Cro. El.* 118. 1 *Leo.* 138.

So alſo, in an Action againſt Huſband and Wife in *C. B.* if the Huſband comes in upon the *Capias* or Exigent, he muſt put in Bail for his Wife. *Bro. Defalt* 7. *Bro. Baron and Feme* 5, 8, 37. 1 *Rol.* 583. *l.* 10. *cont.* for a *Superſedeas* ſhall go for the Husband, and he ſhall go without Day; for he cannot anſwer without his Wife, and Proceſs ſhall continue againſt her till ſhe be waived. *R. acc.* for the Appearance of the Husband ſhall not be recorded, nor a *Superſedeas* allowed for him, till he gives an Appearance alſo for his Wife. 1 *Leo.* 138. *Cro. El.* 118. *R. Hob.* 179.

So, if the Husband be taken on a *Capias* or Exigent. *Bro. Baron and Feme* 1, 10. *R. Cro. Car.* 58.

So, if the Husband be outlawed and ſue a Charter of Pardon and a *Scire facias* upon it; it ſhall not be allowed without his Wife. *Bro. Baron and Feme* 10, 19. *R. Cro. Car.* 58.

So, in an Action againſt Husband and Wife, if the Husband appears by Attorney, he ſhall enter an Appearance for both. 1 *Brownl.* 46. *Mod. Ca.* 86. 1 *Sal.* 115.

So, if he gives Bail, he ſhall give it for both. *Mod. Ca.* 17. 1 *Vent.* 49. 1 *Sal.* 115.

In an Action againſt Husband and Wife, if the Wife be taken on the *Capias*, and not the Husband, an Exigent ſhall iſſue againſt the Husband, *Et idem Dies datus* to the Wife. *Bro. Baron and Feme* 1. But it is ſaid that the Wife ſhall go without Day. *Ibid.* 10, 11. *Vide Poſt*, (B. 10.) *R.* 2 *Cro.* 445. *Cro. Car.* 58. *Hutt.* 86. *Semb.* 1 *Vent.* 49.

So, if the Wife renders herſelf on the Exigent. *Cro. Car.* 58. *Hutt.* 86.

So, if the Husband was before in Cuſtody, and the Wife is taken, and *Non eſt inventus*, returned for the Husband; the Wife ſhall be diſcharged upon Common Bail, and other Proceſs ſhall go againſt the Husband with an *idem Dies* to the Wife. *R.* 1 *Sal.* 115.

If the Husband and Wife are both taken upon the *Capias*, the Husband only ſhall be committed, if he does not give Bail for himſelf and his Wife, and the Wife ſhall be diſcharged. *Adm.* 1 *Lev.* 1. *Semb. cont.* 1 *Vent.* 49. *Acc.* 1 *Lev.* 216.

If the Husband on the Exigent be returned *outlawed*, the Wife ſhall go without Day, for the Proceſs is determined. *Cro. Car.* 58. *Hutt.* 86.

If the Proceſs continues till the Husband is outlawed, and the Wife waived, and ſhe be taken upon Proceſs, and the Outlawry of the Wife is pardoned, but of the Husband not, ſhe ſhall be diſcharged from her Impriſonment. *Dy.* 271. *b.* 1 *Sid.* 21.

If the Husband be taken, or renders himſelf on the Exigent, and the Wife is returned *waived*, the Husband ſhall go without Day. *Cro. Car.* 58.

If the Husband and Wife are both taken, the Wife ſhall be diſcharged, tho' the Action be againſt them for the Debt of the Wife *dum ſola*, and ſhe was firſt in Cuſtody. *R.* 1 *Lev.* 216.

So, if both are taken in Execution. *R.* 1 *Lev.* 51.

But, if there be Judgment againſt a Woman, who afterwards marries, Execution goes againſt the Wife only, and ſhe ſhall be in Execution. *R.* 2 *Cro.* 323. 2 *Bul.* 80.

So, in *B. R.* if the Wife be arreſted, and not the Husband, the Husband is not compellable by the Courſe of the Court to appear for himſelf and his Wife. *Per Cur'.* 1 *Rol.* 583. *l.* 30.

So,

So, in *B. R.* where the Husband is compellable by the Courſe of the Court to appear for himſelf and his Wife, it is in the Election of the Court, whether he ſhall be compelled to give Bail for his Wife; for all Bails are in the Diſcretion of the Court. *R.* 1 *Rol.* 583. *l.* 22.

(B. 5.) At what Time the Appearance ought to be.

(B. 5.) At the Day of the Return of the Writ.

The Defendant ought to appear, regularly, at the Return of the Writ or Proceſs. *Co. L.* 135. *a.*

And if he does not appear at the Return of the firſt Proceſs, he may at the Return of any ſubſequent Proceſs.

By *Rules* upon the *St.* 4 & 5 *W.* & *M.* 21. If a Declaration be delivered to a Priſoner, according to that Statute, before *Menſ. Paſ.* or *Craſt. Animar'*, and *Affidavit* of it filed with the proper Secondary, the Defendant ought to enter his Appearance with the proper Officer within ten Days after *Eaſter* or *Michaelmas* Term, otherwiſe upon a Rule given to appear and plead, to be expired in eight Days, and to be given after the Proceſs upon which he was taken is returned, and on a Copy of the *Affidavit* produced to the Prothonotary, and a Certificate that no Appearance is entred, Judgment ſhall be ſigned againſt the Defendant. *Vide Poſt*, (C. 4. E. 41.) (*Vide Rules and Orders of C. B.* 114, 115.)

So, if a Declaration be delivered in *Hill.* or *Trin.* Term, or upon or after *Menſ. Paſ.* or *Craſt. Animar.* in *Eaſt.* or *Mich.* Term, the Defendant ought to enter his Appearance within two Days before the Eſſoin Day of the next Term. *Vide Rules and Orders of C. B.* 115.

So, in *Replevin*, if the Proceſs continues till a *Pluries* iſſues out of *Chancery*, upon which the Sheriff returns in *Bank*, *Property claimed*, tho' no Day is given by this Writ to the Parties, but to the Sheriff to excuſe his Contempt in not executing the Writ before, yet the Parties may appear: Otherwiſe, there would be a great Miſchief; for there is no other ſubſequent Proceſs. *R.* 1 *Rol.* 581. *l.* 40. *Dub. Dy.* 246. *a.*

So, if a *Pluries* was returnable in *Mich.* Term, and nothing is done till *Eaſt.* the Parties may then appear if they will. 1 *Rol.* 581. *l.* 50.

So, if, after a *Pluries*, upon which the Sheriff does nothing, an Attachment iſſues to the Coroners againſt the Sheriff, and they return, that the Sheriff is attached, but they cannot have View of the Cattle, for which ſhall iſſue a *Diſtringas Vic'* and *Withernam* of the Defendant's Cattle; the Defendant may appear on the *Withernam*. *Cont. Bro. Jour.* 70, 82. *Acc. Dy.* 189. *a.*

Tho' the very Day of the Return of the Writ be the Day for Appearance. *Dy.* 269. *b.*

Yet, it is ſufficient, if the Defendant or Tenant appears on the *Quarto Die poſt*. *Co. L.* 135. *a.*

If the Attorney does not enter Common Bail before the End of the Term in which he appears, he ſhall be put out of his Office. *Ruled* 1 *Rol.* 372.

By the *St.* 5 & 6 *W.* 3. 21. and 9 & 10 *W.* 3. 25. *S.* 33. The Defendant ſhall cauſe an Appearance or Common Bail to be entred or filed within eight Days after the Return of the Proceſs on which he is arreſted, on Pain of 5*l.* to the Plaintiff, for which the Court ſhall award Judgment immediately, whereon the Plaintiff may take out Execution.

And if ſeveral Defendants are arreſted, and one of them appears, and the others do not enter their Appearance within eight Days, Judgment for the 5*l.* ſhall be given againſt him who does not enter his Appearance. *Per C. B. Paſ.* 8 *Ann.*

But if none of the Defendants enter their Appearance within eight Days, Judgment ſhall be againſt all only for one 5*l.* for they may appear jointly, and it ſhall not be intended they would do otherwiſe. *R. in C. B. Paſ.* 8 *Ann.*

[Defendant has eight Days to appear to common *Capias*, tho' the Demand is above 10*l.* and Notice muſt in all Caſes be given. *Barnes* 242, 245, 300.]

And

And if the Sheriff does not return his Writ, the Defendant may appear *gratis* by the Roll, if he be in Danger otherwiſe to loſe his Inheritance. 1 *Rol.* 582. *l.* 10. *Co. L.* 135. *a.* (B. 6.) When at the Day by the Roll.

As, in a *Sequatur ſuo Periculo* againſt a Vouchee, he may appear, tho' the Writ is not returned; for otherwiſe he will loſe in Value. 1 *Rol.* 582. *l.* 12. *Bro. Jour* 93.

So, in a *Præcipe quod reddat, &c. Bro. Jour* 1.

So, in an Appeal.

So, where the Defendant is to have Corporal Pain if he does not appear. 1 *Rol.* 582. *l.* 22. *Bro. Jour* 48, 51, 64, 93. *Bro. Averment con. Ret. Vic.* 12. *Co. L.* 135. *a.*

So, where a Defendant gives a Bond or Surety for his Appearance, he ſhall appear, tho' the Writ be not returned; and there ſhall be a ſpecial Entry upon the Record, *That he appears for the Indemnity of himſelf and his Bail. R.* 1 *Leo.* 90.

So, if the Court does not ſit, or the Juſtices do not come. 1 *Leo.* 90.

And the antient Courſe was to enter the Writ upon the Roll, and then the Defendant might appear at the Day by the Roll. 1 *Sal.* 64.

So, where the Defendant will have other Damage, if he does not appear, he may appear at the Day by the Roll: As, in Treſpaſs, after an Exigent awarded, the Defendant may appear at the Day by the Roll, tho' the Exigent be not returned. 1 *Rol.* 582. *l.* 25.

So, to a Return of *Withernam* in a *Hom. replegiando. Sal.* 583.

So, in an *Audita Querelâ*, if it be returned *Nichil, &c.* 1 *Rol.* 582. *l.* 35.

So, in Debt, if it be not returned, for Fear of a *Capias.* 1 *Rol.* 582. *l.* 37. *Sal.* 583.

Or, if it be returned *Nihil, &c.* 1 *Rol.* 582. *l.* 40.

But the Plaintiff is not obliged to count againſt him, when he appears *gratis* at the Day by the Roll to an Original. 1 *Rol.* 582. *l.* 39. *Bro Jour* 18, 25. *Bro. Averment cont. Ret. Vic.* 10, 28.

Yet, if the Sheriff returns *Nichil, &c.* and the Defendant appears contrary to the Return of the Sheriff, the Plaintiff is bound to count againſt him. *Semb. Bro. Averment cont. Ret. Vic.* 1, 11. *Bro. Defalt* 67.

But where the Defendant will loſe Nothing, he cannot appear at the Day by the Roll, if the Writ be not returned; As, if a Defendant outlawed be pardoned, and ſues a *Scire facias* againſt the Plaintiff, which is not returned; the Plaintiff ſhall not appear at the Day by the Roll, for he loſes nothing. 1 *Rol.* 582. *l.* 15. *Bro. Averment cont. Ret. Vic.* 26.

So, in a *Scire facias* againſt the Garniſhee, he ſhall not appear at the Day by the Roll, if the Sheriff returns *Nichil, &c.* for he ſhall loſe nothing. 1 *Rol.* 582. *l.* 27.

So, in Error, if the Sheriff does not return a *Scire facias*, or returns a *tardè, &c. Bro. Jour* 48. *Bro. Defalt* 64.

So, in a Second Deliverance. *Bro. Averment cont. Ret. Vic.* 28.

So, where the Defendant will loſe nothing but Iſſues. *Bro. Averment cont. Ret. Vic.* 12. *Semb. cont.* 21. *Acc. Bro. Defalt* 41. *Cont.* 64. *And it is ſaid cont.* That the Defendant may appear at the Day by the Roll when he ſhall loſe Iſſues. *Co. L.* 135. *a.*

So the Defendant may appear at the Day by the Roll, when he will have Damage otherwiſe, tho' the Writ was not ſerved: As, if a Man ſues Execution on a Statute, and the Conuſor ſues an *Audita Querela* upon the Acquittance of the Conuſee, which is not ſerved, but the Conuſee prays Execution; he ought to anſwer to the Acquittance at the Day by the Roll, tho' the *Audita Querelâ* was not ſerved. 1 *Rol.* 582. *G.*

So, in *Audita Querelâ* after Releaſe of a Judgment in Treſpaſs. *Cont. Bro. Jour* 51. *Semb. acc. Bro. Averment cont. Ret. Vic.* 25.

So, in a *Scire facias* upon a Recovery in Annuity where *Nichil* is returned, the Defendant may appear at the Day by the Roll; for otherwiſe, upon the firſt *Nichil* there ſhall be Execution againſt him. *Bro. Averment cont. Ret. Vic.* 20, 21.

So the Defendant may appear; if the Sheriff returns the Writ *tardè*. 1 *Rol.* 582. *l.* 20.

Or, if he returns *Nichil per quod ſummoniri poteſt*. 1 *Rol.* 582. *l.* 35.

Or, *Mandavi Ballivo qui nihil inde fecit*. 1 *Rol.* 582. *l.* 43.

So, if he returns *Non eſt invent'*. *Bro. Defalt* 17.

Or, *Languidus in Priſonâ*. *Bro. Jour* 2.

(B. 7.) When a Man, who appears to one Proceſs, ſhall anſwer to another.

If the Defendant be taken on a *Capias*, and comes in by *Cepi Corpus* to one Writ, and has a Day by Diſtreſs to two other Writs, he ought to anſwer to the Writs in which he has Day by Diſtreſs. 1 *Rol.* 580. *l.* 33.

So, if he comes in on a *Cepi Corpus*, he ought to anſwer to an Action of another Perſon there depending. 1 *Rol.* 588. *l.* 30.

So, if a Man be brought in by *Habeas Corpus* out of the *Fleet* to *C. B.* he ſhall anſwer to an Action there depending. 1 *Rol.* 588. *l.* 35. *Vide Ante*, (B. 3.)

So, if he be brought in by *Habeas Corpus* out of *B. R.* 1 *Rol.* 588. *l.* 40.

(B. 8.) When not.

But if the Defendant appears *gratis* to one Action in *B.* he need not anſwer to another Action there depending. 1 *Rol.* 580. *l.* 35.

So, if he appears on a *Habeas Corpus* upon Pretence of Privilege, he need not anſwer to an Action there depending againſt him; for he ought to be diſcharged or remanded. 1 *Rol.* 588. *l.* 45.

So, if he appears to a bad Proceſs, as, to a *Capias*, where a *Diſtringas* lies, and no *Capias*, he need not anſwer. *Bro. Defalt* 11. *Cont. per Needham*, *Bro. Jour* 36.

(B. 9.) When one Defendant, who appears, ſhall anſwer without the other.

In Perſonal Actions againſt ſeveral, if one Defendant appears, and the other makes Default, he who appears ſhall make anſwer without the other.

And if one only appears and files Bail, and the other not, and the Plaintiff proceeds againſt both, it will be Error. *R.* 2 *Rol.* 46.

But if Bail be omitted by the other, thro' Covin, it ſhall be amended. 2 *Rol.* 46.

So, in Ejectment of Ward, or Raviſhment of Ward; for thoſe are in the Nature of Treſpaſs. 1 *Rol.* 589. *l.* 15.

(B. 10) When not.

But in all Real Actions where the Proceſs is by Attachment and Diſtreſs, if one appears, he ſhall not be put to anſwer till the other alſo appears, (except where the Proceſs is determined againſt the other; for he who does not appear ſhall not loſe his Freehold by the Plea of the other. 1 *Rol.* 589. *l.* 35.

As, in a *Quod Permittat* againſt two. 1 *Rol.* 589. *l.* 40.

So, in a *Præcipe quod reddat* againſt two, the one who appears ſhall not be put to anſwer till after the Return of the *Grand Cape*. 1 *Rol.* 589. *l.* 5.

So, in Debt againſt Huſband and Wife, if the Huſband appears, and the Wife makes Default, the Huſband ſhall not be put to anſwer, but the Proceſs ſhall continue againſt the Wife, and *idem Dies* be given to the Huſband. *R.* 1 *Rol.* 589. *l.* 30. *Vide Ante*, (B. 4.)

So, in Treſpaſs againſt Huſband and Wife. *Semb. cont.* 1 *Rol.* 589. *l.* 20. But there the Proceſs was diſcontinued againſt the Wife.

So,

So, if the Wife appears and the Husband makes Default, she shall not answer without her Husband. 1 *Rol.* 589. *l.* 27. 1 *Sal.* 115.

So, if the Husband is outlawed and the Wife waived, and the Wife is taken and produces a Charter of Pardon, the Pardon shall not be allowed; for she cannot have a *Scire facias* without her Husband against the Plaintiff to force him to declare against them, and the Pardon is conditional *si staret recta in Curia.* *R. Dy.* 271. *b.*

But if Process be against Husband and Wife, who appear on the Exigent, but the Husband refuses Bail for himself and his Wife; the Wife alone may make an Attorney to appear for her, to avoid being waived. *Dy.* 271. *b. in Marg.*

[If there is Process against two, on a joint Cause of Action, and one only appears, the other must be outlawed before there can be further Proceedings. *Edwards* v. *Carter*, *M.* 8 *G. Str.* 473.]

(B. 11.) Default of Appearance.

If the Plaintiff or Demandant, Tenant or Defendant, does not appear in Court at the Return of every Process, or at every Continuance, it shall be a Default. *Co. L.* 259. *b.*

Or, if he does not cast an Essoin when he may; for that excuses his appearing till the Day to which the Essoin is adjourned.

Default may be before, or after, Appearance.

If Default be before Appearance in all *Præcipe's quod reddat*, a *Grand Cape* issues, and at the Return, if the Tenant does not save or excuse his Default, he shall lose the Land. *Mod. Ca.* 4. *Lut.* 861. *Vide Process*, (D. 4.)

So, if he does not save his Default at the Return of the Grand Distress; where Process is by Summons, Attachment, and Distress. *Vide Mod. Ca.* 8.

Default after Appearance is, where the Tenant or Defendant does not appear at the Day given by the Court, or at any Return of *mesne* Process.

If he appears, and afterwards, being demanded by the Court the same Day, will not appear, it will be a Departure in Despite of the Court, upon which there shall be Judgment against him immediately. *Mod. Ca.* 8.

So, if the Demandant imparls generally, and the Defendant does not appear at any Time when he is demanded in the same Term, it shall be a Departure in Despite of the Court; for the whole Term is but one Day. *Sho.* 22, 66.

So, if an Imparlance be to a Day certain in the same Term, and the Defendant does not appear at the Day. *Mod. Ca.* 8. *Sho.* 66.

So, if the Tenant makes Default at the Return of the Process, or Day given by Continuance to another Term, in all *Præcipe's quod reddat*, a *Petit Cape* goes, and if he does not then save his Default there shall be Judgment final. *Mod. Ca.* 4.

Or the Demandant may waive the Default and proceed by other Process. *Mod. Ca.* 4. 1 *Sal.* 217.

So, in a *Præcipe quod faciat, &c.* there shall be a *Distringas ad audiendum Judicium.* *Mod. Ca.* 8.

So, in Annuity; for tho' it be a Personal, in the Process it participates of the Nature of a Real Action. *Mod. Ca.* 8.

But in all Personal Actions, upon a Default after Declaration, before Issue, there shall be final Judgment against the Defendant. *Mod. Ca.* 8. *Sho.* 65. 1 *Sal.* 216.

So, after Issue upon the second Default, by the *St. Marlb.* 13 and *W.* 2. 27. *R.* 1 *Sal.* 216.

When a Default shall be excused; *Vide infra.*

When the Default of one shall be the Default of another; *Vide*, when the Nonsuit of one shall be the Nonsuit of another, *Post*, (X. 5.)

(B. 12.) Of what Effect it shall be.

When the Plaintiff shall be nonsuited upon his Default; *Vide Post*, (X. 1, &c.)

When an Inquest shall be taken by Default; *Vide Enquest*, (E.)

When Judgment ſhall be on Default; *Vide Poſt*, (Y. 1.) for Judgment on Default in Perſonal Actions: And *Vide Ante*, (B. 11.) for Judgment in Real Actions and in Proceſs.

The Tenant may ſave his Default by waging his Law of Non-ſummons; *De quo Vide Abatement*, (H. 53.—I. 26.)

Or by Excuſe, That he was in Priſon.

By Tempeſt, Inundation of Water, or Bridge broken.

But in Perſonal Actions the Defendant can never ſave his Default. 1 *Sal.* 217.

(C) Count.

(C. 1.) To whom a Declaration ſhall be delivered.

THE firſt Act, after the Appearance of the Parties, *&c.* is, that the Party ſuing ſhall count. *Th. D. l.* 10. *S.* 5.

In *B. R.* the Courſe is, that the Plaintiff's Attorney delivers his Declaration to the Defendant's Attorney, who makes a Copy of it, and then redelivers it, when his Anſwer is required. *Comp. Att.* 314.

In *C. B.* the Plaintiff's Attorney makes a Copy of the Declaration, and delivers this to the Defendant or his Attorney: (*Vide Comp. Att.* 314.)

And if he does not know where the Attorney or Clerk of the Defendant may be found, he may deliver it in the Prothonotary's Office. 2 *Mod. Ca.* 379.

Or, if the Defendant's Attorney refuſes to pay for the Declaration, a Delivery in the Office with Notice to the Attorney, is ſufficient. *Ibid.*

[In *B. R.* on Special or Common Bail filed, and Notice given, Plaintiff's Attorney ſhall deliver Declaration to Defendant's Attorney, who ſhall pay for it; if he refuſes to pay, or his Habitation is not known, Plaintiff's Attorney may leave it in the Office with the Clerk of the Declarations, and give Notice: and ſuch Delivery is good from the Notice. *General Rule of Trin.* 11 *G.* 2 *Ld. Raym.* 1407.]

[Notice of a Declaration left in the Office, muſt ſpecify the Nature of the Action in technical Terms; if not, Judgment ſhall be ſet aſide. *Graves* v. *Wiſe*, *T.* 31 *G.* 2. 2 *Wilſ.* 84.]

[It is well delivered only from the Time of Notice. *Barnes* 227.]

And by the *St.* 4 & 5 *W. & M.* 21. If the Defendant be detained in Priſon for Want of Sureties for his Appearance, the Plaintiff may cauſe a Copy of the Declaration to be delivered to the Priſoner, or to the Gaoler in whoſe Cuſtody he is, *&c.*

So, by the *St.* 8 & 9 *W.* 3. 27. If the Defendant be a Priſoner in the *Fleet*, the Plaintiff, after filing or entring a Declaration with the proper Officer, may deliver a Copy of ſuch Declaration to the Defendant in any Perſonal Action, or to the Turnkey or Porter of the *Fleet* Priſon, *&c.*

So, if the Defendant be in *Cuſtodia Mareſchalli*, the Plaintiff may file a Bill, and then deliver a Declaration to the Turnkey. 1 *Sal.* 345.

[If Defendant ſerved with Proceſs whilſt at large, becomes afterwards Priſoner, the Declaration muſt be delivered to the Turnkey. *Barnes* 392.]

[The original Declaration, and not a Copy, muſt be left at the Priſon. *Barnes* 434.]

[If the Declaration is not delivered to the Turnkey (Defendant being in Priſon) a *Superſedeas* ſhall be granted, tho' the Declaration was left in the Office. *Greenhouſe* v. *Cleever*, *M.* 8 *G.* *Str.* 474.]

[A Defendant who has ſurrendered on the Fugitive-Act cannot be charged with Declaration. *Barnes* 380.]

[Defendant is arreſted by Plaintiff, as Executor, who finds his Action wrong, makes a new Affidavit for Bail, and charges Defendant with new Declaration in his own Right; Proceedings ſhall be ſet aſide. *Barnes* 391.]

If it be in the Vacation, he ought alſo to make an Entry in the Marſhal's Book at his Office. 1 *Sal.* 345.

If

If the Copy of the Declaration delivered, varies materially from the Original, that ſhall not be to the Prejudice of the Defendant, but of the Plaintiff; for his Attorney was paid for it. *C. Att.* 298.

If, after Imparlance, the Plaintiff delivers a new Declaration variant and more correct than the firſt; that does not avail: For the Judgment ſhall be on the firſt. *R. Cro. El.* 507.

[On Proceſs by Huſband, Declaration by the bye cannot be delivered at the Suit of Huſband and Wife. *Barnes* 337.]

(C. 2.) At what Time.

A Declaration cannot be delivered, till the Defendant appears, or is in Cuſtody. *Vide Ante*, (B. 1.)

So a Declaration ſhall not be received, or delivered to the Attorney, before his Appearance is entred with the Filazer. *By Rule, P.* 24 *Car.* 2. *C. B.* (*Vide Rules and Orders of C. B.* 59.)

After Appearance the Plaintiff ought to declare.

If the Defendant comes in upon *Habeas Corpus*, the Plaintiff ought to declare in two Terms, otherwiſe the Defendant ſhall be diſcharged on Common Bail. *Mod. Ca.* 21.

[If there is a Treaty between Plaintiff and Defendant, he is not obliged to declare within the two Terms. *Walter* v. *Stewart*, *T.* 13 *G.* 3. 3 *Wilſ.* 455.]

And if he gives Bail, after the Return of the Proceſs, and not upon the Return, he cannot by Rule oblige the Plaintiff to declare before. *Mod. Ca.* 21.

So, if a Priſoner eſcapes, and be afterwards committed on the *St.* 1 *Ann. Seſſ.* 2. 6. the Plaintiff may declare againſt him in two Terms, otherwiſe the Defendant ſhall be diſcharged. *Mod. Ca.* 22. 2 *Mod. Ca.* 306.

But if a Rule be given, and the Plaintiff does not declare the ſame Term, the Defendant, after Demand of a Declaration, may enter a Nonſuit when the Rule expires. *Vide Rules and Orders of C. B.* 23.

[If Defendant brings *Habeas Corpus*, and puts in Bail in *Trin.* Term, and Plaintiff does not deliver Declaration till *Hil.* following, Defendant's Attorney is not bound to accept it. *Hutton* v. *Stroubridge*, *T.* 11 *G. Str.* 631.]

[Declaration by the bye cannot regularly be delivered after the Term in which the Writ is returnable. *Barnes* 346.]

[Declaration againſt Priſoner in County-goal, may be filed any Time before Rule to plead. *Barnes* 372.]

[Delivery in Priſon on *Sunday* is good. *Barnes* 387.]

[Defendant is ſuperſedable for Want of Declaration, Plaintiff diſcontinues, charges Defendant ſtill in Cuſtody with new Writ on the old Cauſe of Action, he ſhall have *Superſedeas* on common Appearance. *Barnes* 396.]

[If Defendant, ſuperſedable, has applied for one, and after Summons ſerved, Plaintiff delivers Declaration, ſigns Judgment, and charges Defendant in Execution, all ſhall be ſet aſide. *Barnes* 400.]

[Two Defendants, one in Priſon, the other abſconds, and Proceedings to Outlawry are going on, the Court will grant Time to declare. *Barnes* 401.]

[The Delivery of a Declaration in *B. R.* to a Priſoner in the *Fleet*, does not prevent a *Superſedeas*. *Barnes* 402.]

(C. 3.) In *B. R.*

In *B. R.* if the Defendant appears in Perſon, the Plaintiff ought to declare within three Days after Appearance. *C. Att.* 318. *C. Sol.* 303. *Han. Int.* 2.

By the *St.* 8 *El.* 2. If the Defendant was arreſted, or appeared on the Return of the *Latitat*, *Alias*, or *Pluries Capias* out of *B. R.* and put in Bail according to the Courſe of the Court, the Plaintiff not declaring in three Days after, the Judges at Diſcretion, as they ſee Default in the Plaintiff, ſhall award Coſts to the Defendant, to be recovered *ut infra*.

And by the *ſame Stat.* If arreſted or attached on a Suit in the *Marſhalſea*, Courts of *London*, or other City, Borough, *&c.* in any Perſonal Action, the Plaintiff ſhall put in a Declaration in three Days after Bail or Appearance, if the Court have Continuance *de Die in Diem*; if not, at the next Court (unleſs fur-

ther Day be given by the Court) otherwiſe the Court ſhall award Coſts to the Defendant to be recovered by Action of Debt, &c. in any Court of Record.

If the Defendant appears, and the Plaintiff does not declare, he ſhall be nonſuited. *Bro. Defalt* 13.

By the *St.* 13 *Car.* 2. 2 *Seſſ.* 2. If the Plaintiff declares not againſt the Defendant (arreſted on Proceſs out of *B. R.* wherein the Cauſe of Action is not particularly expreſſed, and where the Defendant is bailable by the *St.* 23 *H.* 6. 9.) in ſome Perſonal Action or in Ejectment, before the End of the Term next after the Defendant's Appearance, a Nonſuit ſhall be entred againſt the Plaintiff, and the Defendant ſhall have Judgment to recover Coſts, to be taxed and levied, as Coſts by the *St.* 23 *H.* 8. 15.

So, where the Cauſe of Action is expreſſed, and ſpecial Bail given. *Semb. Vid. Introd.* 2.

So, in all Caſes. *C. Sol.* 69. *Per Coke*, 3 *Bul.* 214.

So, if the Defendant appears upon Proceſs, and gives Bail; tho' he never was arreſted. *Sal.* 455.

And by *Rule in B. R.* If the Defendant be committed to the *Marſhalſea* by any Proceſs out of *B. R.* and gives a Rule to declare, and the Plaintiff does not declare before the End of the next Term after the Commitment incluſive, the Defendant ſhall be diſcharged on Common Bail. *C. Att.* 356.

[If on a Writ taken out in *Eaſter* Term, returnable the laſt of *Trinity*, Defendant is taken before the End of *Eaſter* Term, and continues in Cuſtody of the Sheriff till after the End of *Trinity* Term, without being charged with a Declaration, he ſhall be diſcharged on Common Bail. *Pullen* v. *White*, *M.* 4 *G.* 3. 3 *B. M.* 1448.]

[The Rule for Defendant's being diſcharged on common Bail, extends to Defendant not taken, but ſurrendering himſelf in diſcharge of Bail; and the Time runs from Notice of his being in Cuſtody. *Ruſſel* v. *Stewart*, 6 *G.* 3. 3 *B. M.* 1787.]

So, if the Defendant be committed to any other Priſon, and *Affidavit* be made of ſuch Rule given to declare. *C. Att.* 356.

And by the *St.* 4 & 5 *W.* & *M.* 21. The Time allowed for Delivery of a Declaration to a Priſoner or Gaoler, &c. is only before the End of the next Term after the Writ or Proceſs is returnable.

If the Defendant appears at the Suit of *A.* and a Stranger declares againſt him upon the Common or Special Bail given to ſuch Suit, (as may be in *B. R.*) he ought to declare within the ſame Term in which Bail was filed. *C. Att.* 313.

Yet *A.* may declare at any Time before the End of the next Term. *C. Att.* 313.

But, tho' the Time for the Delivery of a Declaration be expired, the Defendant ſhall not have a Nonſuit ſigned, if his Attorney has not demanded a Declaration, and given a Rule; for in all Actions, (except *Replevin*) the Defendant ſhall not enter a *Non Proſſ.* till the Plaintiff or his Clerk, if they may be found, be aſked for a Declaration. *By Rule* 1654. (*Vide Rules and Orders of C. B.* 23.)

[By Bill if Defendant is in actual Cuſtody or has appeared, any other Plaintiff may deliver Declaration by the bye in the ſame Term in which Bill returnable. *Sulyard* v. *Harris*, *H.* 8 *G.* 3. 4 *B. M.* 2180.]

[Common Bail, filed by Plaintiff's Attorney, does not warrant delivering a Declaration by the bye. *Wallis* v. *Smith*, *H.* 9 *G.* 2. *Str.* 1027. *B. R. H.* 207.]

[Tho' there are ſeveral Dendants, there muſt be but one Judgment of *Nonpros* ſigned againſt Plaintiff. *Pryce* v. *Foulkes*, *P.* 9 *G.* 3. 4 *B. M.* 2418.]

(C. 4) In *C. B.* *Vide Ante*, (C. 2, 3)

In *C. B.* If the Defendant appears in Perſon, the Plaintiff ought to declare. If he appears upon the Exigent by *Superſedeas quia improvidè*, the Plaintiff, if he does not declare within ſix or eight Days, a Rule being given, ſhall be non-

nonſuited, and the Defendant ſhall have his Coſts taxed by the Prothonotary. *C. Att.* 29.

By the *St.* 13 *Car.* 2. 2. *Seſſ.* 2. If the Plaintiff declare not againſt the Defendant, (arreſted in Proceſs out of *C. B.* where the Cauſe of Action is not particularly expreſſed, and the Defendant is bailable by the *St.* 23 *H.* 6. 9.) before the End of the next Term after Appearance, a Nonſuit ſhall be entred as in *B. R. Ante*, (C. 3.)

So, in all Caſes, where the Defendant appears at the Return of the Proceſs, the Plaintiff ought to declare before the End of the next Term after the Term in which the Proceſs was returnable; otherwiſe the Defendant, upon a Rule given in the Office of the Plaintiff's Attorney, ſhall enter a Nonſuit, and ſhall have Execution for his Coſts. *C. Sol.* 69. *Compl. Att.* 293.

So, tho' no Rule be given by the Defendant, but a Continuance entred by *Dies datus*. *Compl. Att.* 293.

By *Rule*, *H.* 14 & 15 *Car.* 2. If the Defendant be committed to the *Fleet* in *Hilary* Term, or the Vacation after, if the Plaintiff does not bring him to the Bar by *Habeas Corpus*, and declare againſt him within ſix Days after the Beginning of *Trinity* Term, he ſhall be diſcharged of Courſe by *Superſedeas* out of the Prothonotary's Office, where his Commitment was entred, if he enters his Appearance, and brings a Certificate under the Hand of the Warden of the *Fleet*, that no Proceeding by *Habeas Corpus* was againſt him within the Time aforeſaid. *C. Att.* 277. (*Vide Rules and Orders of C. B.* 43.)—But now, by the *St.* 4 & 5 *W.* & *M.* 21. There is no Neceſſity for a *Habeas Corpus*.

[Priſoner by Proceſs of *B. R.* removed to the *Fleet*, muſt apply to *C. B.* for *Superſedeas*, if Plaintiff does not declare in Time. *Barnes* 384.]

So, if he was committed in *Eaſter* Term, or in the Vacation after, and the Plaintiff does not bring him in by *Habeas Corpus*, and declare within ſix Days after the Beginning of *Mich.* Term. *C. Att.* 278. (*Vide Rules and Orders of C. B.* 44.)

So, if he was committed in *Trinity* Term, or in the Vacation after, and the Plaintiff does not bring him to the Bar, and declare before the End of *Mich.* Term. *Ibid.*

So, if he was committed in *Mich.* Term, or in the Vacation after, and the Plaintiff does not bring him to the Bar, and declare within ſix Days after the Beginning of *Eaſter* Term. *Ibid.*

And the Plaintiff may declare within the next Term after ſuch Appearance, or *Superſedeas*; otherwiſe the Defendant's Attorney may refuſe the Declaration. *C. Att.* 278. (*Vide Rules and Orders of C. B.* 45.)

So, if the Defendant be in the Cuſtody of the Sheriff, or other Gaoler, and the Plaintiff does not bring him by *Habeas Corpus* to the *Fleet*, he ſhall be diſcharged *ut ſupra* at the End of the third Term after the Arreſt; and the Plaintiff ought to declare within the next Term after ſuch Appearance, and not afterwards. *C. Att.* 278. 2 *Vent.* 143. (*Vide Rules and Orders of C. B.* 45.)

Or, if the Priſoner enters his Appearance by Attorney before, and gives Notice of it to the Plaintiff or his Attorney, and makes *Affidavit* of it in Court, he ſhall be diſcharged, unleſs the Plaintiff declares againſt him in the next Term after ſuch Appearance, upon *Affidavit* by the Defendant's Attorney, that no Declaration was delivered to him. *C. Att.* 278, 9. (*Vide Rules and Orders of C. B.* 45.)

And by the *St.* 4 & 5 *W.* & *M.* 21. If the Plaintiff delivers a Declaration to the Priſoner, or Gaoler, &c. he ought to do it before the End of the next Term after the Writ or Proceſs is returnable. And after a Declaration filed in the Office. 2 *Mod. Ca.* 227.

And by a *Rule* of the Judges hereupon, if a Declaration be not entred in the Office, before the End of the next Term after the Proceſs, upon which the Defendant is arreſted, was returnable, and *Affidavit* of it be filed within ten Days after *Eaſter* Term, or within twenty Days after any other Term, the Priſoner ſhall be diſcharged by *Superſedeas* upon entring his Appearance according to the antient Practice of the Court. (*Vide Rules and Orders of C. B.* 116.)

But

But if the Declaration be not delivered to the Priſoner till after the third Term, if he does not attempt his Diſcharge before *ut ſupra*, a Delivery and Judgment upon it are good, and the firſt Bail are liable to it. *R.* 2 *Vent.* 143.

So a Copy of a Declaration ought not to be delivered to the Priſoner, before the Proceſs upon which he was taken is returnable.

Nor ſhall there be any Rule for a Defendant in Cuſtody to plead to the Declaration delivered, before *Affidavit*, filed withthe proper Secondary, of the Delivery of a Copy of the Declaration, and when, and to whom delivered. *Vide Poſt*, (E. 40, *&c.*)

So, if the Defendant be outlawed, and he reverſes the Outlawry and gives Bail (as he ought;) if the Plaintiff does not declare within two Terms after the Outlawry reverſed, the Declaration may be refuſed, but the Plaintiff ſhall not be nonſuited. *C. Att.* 30. Becauſe the Defendant was not taken on a common Writ. *Ibid.*

And if the Defendant appears, and gives a Rule to declare, and demands a Declaration, the Plaintiff ought to declare four Days or more before the Eſſoin-day of the next Term, otherwiſe he ſhall be nonſuit. *Vide C. Att.* 295.

Tho' the Writ was returnable the laſt Return of the preceding Term. *Semb. C. Att.* 295.

But in all Actions (except in *Replevin*) a Nonſuit for Want of a Declaration ſhall not be entred, tho' the Rules to declare are expired, 'till a Declaration be demanded of the Attorney or Clerk of the Plaintiff, if their Dwelling is known. *R. C. Att.* 294, 5.

And if an Attorney delivers a Declaration, without ſhewing a Deed, Will, Letters of Adminiſtration, *&c.* therein mentioned, and agrees that the Defendant ſhall not be obliged to plead 'till the ſhewing of them; there ſhall be no Nonſuit for Want of a Declaration, if ſuch Deed, *&c.* be ſhewn before the End of the next Term, *C. Att.* 295.

And no Rule to declare ſhall be given after three Days excluſive after the End of any Term. *C. Att.* 294.

And ſuch Rule ſhall be expiring at four Days incluſive of the Day in which it was given. *C. Att.* 294.

(C. 5.) How the Declaration ſhall be entred.

When a Declaration is delivered in *B. R.* the Plaintiff's Attorney ingroſſes it on a Roll, which is called the Imparlance Roll, upon which the Continuances are indorſed, from the Term, in which the Declaration was made, till Iſſue is joined, or the Action is confeſſed, *&c.* and then it is filed with the Clerk of the Declarations.

But it is not uſually ingroſſed till the Defendant has pleaded.

And by the Courſe of *B. R.* no Continuance is entred 'till after Demurrer, or Iſſue joined, and then indorſed before Judgment. 1 *Rol.* 485. *l.* 15.

The Imparlance Roll is a Warrant for the Plea Roll, and the ſecond Declaration ſhall be amended by the firſt. *R.* 2 *Cro.* 105. *Vide Amendment*, (L. 2.)

Or, if there be a material Variance in the ſecond from the firſt Declaration, it will be bad. *R.* 2 *Cro.* 415, 498, 537.

When a Declaration is delivered in *C. B.* it ought to be entred on a Roll in the Prothonotary's Office, and put in the Dogget of the ſame Office, with the Number of the Roll.

And it ought to be entred in the ſame Term, in which it is delivered. *C. Sol.* 68.

But if the Entry of the Imparlance be in the Office of one Prothonotary, and the Nonſuit in another, it is well; for the Whole is one Record, and the Court does not take Notice of the Diſtinction of Offices. *R.* 2 *Cro.* 39.

But, in an Appeal, if the Defendant be arraigned at the Bar, and pleads *inſtanter, Not Guilty*, there is no Occaſion for the Declaration to be filed. *R. Cro. Car.* 532.

Otherwiſe, if the Defendant pleads any other Plea than *Not Guilty*, by which there is a Continuance till another Term; for then the Declaration ought to be filed by the Courſe of the Court. *Cro. Car.* 532.

(C. 6) How it ſhall be amended.

After the Declaration is delivered, the Plaintiff, in the ſame Term and before Plea, may amend as he pleaſes. *Vide Amendment.* (L. 1, 2.)

But after Plea, he cannot amend it, without Leave of the Court. *Pr. Reg.* 17.

After Plea, he cannot amend his Bill upon the File in *B. R.* without Leave; Otherwiſe before Plea. *Pr. Reg.* 18.

And, by Leave of the Court, ſo long as all remains in Paper, the Court may allow an Amendment at Diſcretion. 1 *Sal.* 47.

[Declaration in Replevin amended as to the Name of the Pariſh, after the Miſnomer had been pleaded in Abatement, on Motion and Payment of Coſts. *Garner* v. *Anderſon*, *M.* 3 *G. Ld. Gage* v. *Robinſon*, *P.* 1 *G.* 2. *Str.* 11.]

[But after Demurrer argued and allowed, Amendment not allowed even with Coſts. *Butler* v. *Maliſſey*, *H.* 4 *G. Str.* 76.]

[On a Bail-bond, if the Aſſignment appears to be ſubſequent to the *Memorandum*, the Court will give Leave to file a new Bill to amend by, after a Demurrer. *Ruſſel* v. *Martin*, *P.* 10 *G. Str.* 583.]

[Plaintiff may have Leave to amend by the Bill on the File, after Special Demurrer, Joinder and Argument. *R. on Debate. Biſhop* v. *Stacy*, *M.* 7 *G. Str.* 954.]

But in *B. R.* in the next Term, or after Plea, the Plaintiff cannot inſert a new Count, as *Indebitatus Aſſumpſit*, *&c. C. Att.* 315. *Sti. Pr. Reg.* 141.

Yet after the General Iſſue pleaded, when nothing is entred, but all remains in Paper, he may amend Matter of Form, without Coſts, or giving an Imparlance. *C. Att.* 315.

And Matter of Subſtance, paying Coſts, or giving an Imparlance, at his Election. *Ibid.*

So, after Declaration entred, he may, by order of the Court or of a Judge, amend a ſmall Matter which does not deface the Roll, paying Coſts, or giving an Imparlance, at his Election. *C. Att.* 357.

This is ſaid to be at the Election of the Defendant. *

[It is the Plaintiff who has the Election, either to pay Coſts, or give an Imparlance. *Per Cur. Ward* v. *Charitable Corporation*, *T.* 8 *G.* 2. *B. R. H.* 126.] * [*Vide Sti. Pr. Reg.* 20. *acc.*—*C. Att.* 357. *cont.*]

[If Defendant takes Notice of the Motion to amend, the Amendment ſhall be made without either. *Semb. Ibid.*]

If the Plaintiff pays Coſts, the Defendant ſhall plead, without a new Rule. *Sal.* 517. If the Plaintiff amends the ſame Term the Defendant pleads. *Sal.* 520.

Otherwiſe, if he gives an Imparlance. *Sal.* 517, 518.

But after a ſpecial Plea, the Plaintiff, if he amends in Subſtance, ſhall pay Coſts, and has not his Election to give an Imparlance. *C. Att.* 315.

So, when the Declaration is upon Record, or ingroſſed, it ſhall not be amended, beyond what is allowed by the Statute of Jeofails. 1 *Sal.* 47.

So in *C. B.* before Declaration entred, the Plaintiff, by Order of a Judge or Prothonotary, may amend, paying Coſts, or giving an Imparlance at his Election. *C. Att.* 297. *Mills* 27.

So, after Declaration entred, before Iſſue or Demurrer entred. *C. Att.* 297. If the Amendment be a ſmall Matter, which does not deface the Roll, it may be amended by the Court, on Payment of Coſts, and giving Liberty to plead with a new Imparlance. *Ibid.*

[In *quare Impedit*, after *Oyer* of Original craved, Plea pleaded, and Variance ſhewn between the Writ and the Count, the Declaration may be amended on Motion, and Payment of Coſts, and Defendant ſhall plead *de Novo*. *Reppington* v. *Tamworth School*, *P.* 33 *G.* 2. 2 *Wilſ.* 118.]

And tho' the Declaration was delivered many Years back, if nothing be on Record, it may be amended, paying Coſts, or giving an Imparlance to the Defendant, at his Election. *Pr. Reg.* 20.

[*Latitat* againſt *A.* and *B. A.* only ſerved, Declaration delivered to him as againſt both, of that Term; *alias Capias* againſt both; *B.* ſerved; Declaration delivered as of the ſame Term; the Proceedings ſhall not be ſet aſide for delivering Declaration as againſt two, when only one ſerved, but Declaration amended, by intitling it of the Term after both were ſerved. *Stork* v. *Herbert*, *H.* 22 *G.* 2. 1 *Wilſ.* 242.]

So after the Record is made up for Trial. *Per Holt*, 1 *Sal.* 47. *R.* where the Action would otherwiſe be loſt. 3 *Lev.* 347. *Fig.* 193.

Or, after Demurrer joined, if the whole be in Paper. *Mod. Ca.* 38.

So, after Error brought, upon Payment of Coſts. 3 *Mod.* 113.

So an Information may be amended without Coſts, or Imparlance, in a Matter of Form. 1 *Sal.* 50.

So an Information may be amended after Plea, when the Whole is in Paper. 1 *Sal.* 47.

So, a Plea to an Indictment, after a Replication to it is delivered; tho' the Plea was filed, but not entred on Record. *R.* 1 *Sal.* 47.

Yet the King, or the Proſecutor, ſhall pay Coſts for an Amendment, where a common Perſon ought. 1 *Sal.* 193.

But, generally, after Iſſue joined, and Notice of Trial, no Amendment ſhall be allowed. *R.* 2 *Mod.* 144.

[In a *qui tam* Action, to which the general Iſſue is pleaded, and the Cauſe is carried down by Proviſo, but poſtponed for Length, the Declaration may be amended on Motion, but the Defendant ſhall have Liberty to plead *de novo*. *French* v. *Whitfield*, *T.* 10 & 11 *G.* 2. *Andr.* 13.]

[The Court will not give leave to amend Declaration after the Term next after the Term it was delivered, and after Defendant has pleaded; eſpecially if Defendant is in Cuſtody. *Aubeer* v. *Barker*, *M.* 20 *G.* 2. *Wilſ.* 149.]

And if a Declaration be delivered, materially varying from the original Declaration, the Prejudice ſhall not be to the Defendant, but to the Plaintiff, becauſe his Attorney was paid for the Copy delivered. *Per Rule* 1654. *Mills* 28. *Vide C. Att.* 298.

In Ejectment the Time of the Demiſe, (which is not yet come by a Miſtake of the Year,) ſhall not be amended after Verdict. *R.* 1 *Sal.* 48.

Otherwiſe, in a Judgment on a Warrant of Attorney; for elſe the Agreement of the Parties would be defeated. 1 *Sal.* 48.

So, after a Demurrer entred upon the Roll, no Amendment of the Declaration ſhall be allowed. *R.* 1 *Sal.* 50.

[After Judgment is arreſted, Declaration cannot be amended, tho' on Payment of Coſts. *Semb. Sed Q. Collins* v. *Cibbs*, *M.* 33 *G.* 2. 2 *B. M.* 899.]

[If Plaintiff moves to add a Count, to make his Declaration good from the Delivery, ſo to prevent *Superſedeas*; Court will not grant it, unleſs he agrees to a *Superſedas* ſix Days after Term. *Barnes* 500.]

When a Declaration may be altered upon Payment of the Debt by the Defendant. *Vide Poſt*, (C. 10.)

When a Declaration ſhall be amended upon the Statutes of Jeofails, *Vide Amendment*, (L. 1, 2.)—When a Plea, *Vide Poſt*, (E. 39.)—*Amendment*, (M.)

(C. 7.) The Form of a Count, or Declaration.

The Count or Declaration is an Expoſition of the Writ, and adds Time, Place, and other Circumſtances, ſo that it may be tried. *Co. L.* 303. *b.* 17. *a.*

But this is to be underſtood of Perſonal Actions, for, in Real and Mixt Actions, it is not uſual to count of the Year, Day, and Place. *Bro. Count* 59.

The Declaration, regularly, ſhall be delivered of the ſame County where the Original was ſued.

But if it be in another County, it is good as to the Defendant, tho' his Bail will thereby be diſcharged. *R.* 3 *Lev.* 235.

[The

[The true Day of filing Bill ſhall be inſerted in the Declaration. *Barnes* 343.]

[Defendant has a Right to call on Plaintiff to *intitle his Declaration* agreeable to the *true Time* of delivering it. *Thompſon* v. *Marſhal*, *T.* 24 & 25 *G.* 2. 1 *Wilſ.* 304. *Wilkes* v. *Earl Halifax*, *M.* 5 *G.* 3. 2 *Wilſ.* 256.]

[Superfluous Counts may be ſtruck out, with or without Coſts, according to Circumſtances. *Barnes* 335, 341, 344.]

[A Declaration may be referred for Scandal and Impertinence, (as if a Surgeon declares for curing Defendant of the *foul Diſeaſe*) the Words ſtruck out, and exemplary Coſts given; the Rule for referring Scandal, *&c.* ought to be the ſame at Law as in Equity. *Per Cur.* *Anon.* *H.* 28 *G.* 2. 2 *Wilſ.* 20.

(C. 8.) In *B. R.* Ought to be *in Cuſtod. Mar. Mar.*

The Plaintiff cannot declare againſt any one in *B. R.* but in *Cuſtodia Mareſcalli*. *Cro. El.* 223.

Except where the Defendant has Privilege. 2 *Sand.* 415.

Or the Action is brought in *Middleſex*. *Dy.* 118. *a.*

Mar. Mar. noſtræ ſhall be intended, Marſhal of *B. R.* *Sal.* 602.

And now, by the *St.* 4 & 5 *W. & M.* 21. If a Defendant taken on a Proceſs out of *B. R.* be detained for Want of Surety for Appearance, the Plaintiff may deliver a Declaration to the Priſoner, or the Gaoler in whoſe Cuſtody he is, and in the Declaration alledge, in the Cuſtody of what Sheriff, Bailiff, *&c.* the Priſoner is at the Time of the Declaration delivered, which ſhall be as effectual, as if alledged, in the Cuſtody of the Marſhal of the *Marſhalſea*.

If he be in actual Cuſtody of the Marſhal of the *Marſhalſea*, it is ſufficient in Term to file a Bill againſt him, and deliver a Declaration to the Turnkey. 1 *Sal.* 213.

In Vacation it ought alſo to be entred in the Book of the Marſhal's Office, *quod remaneat in Cuſtod' ad Sect. A. B. Ibid.*

And therefore, before the Plaintiff can declare, there ought to be a *Committitur* of the Party, or Bail put in by him in *B. R.* 1 *Rol.* 581. *l.* 10. *Poph.* 145.

And before the *St.* 4 & 5 *W. & M.* 21. If he was arreſted in the Country, and there detained, he muſt have been removed by *Habeas Corpus* to *B. R.* before the Plaintiff could declare.

And tho' the Bill relates to the firſt Day of the Term, the Action ſhall not be ſaid to be depending 'till Bail is filed. *R.* 1 *Vent.* 135, 264.

But if a Man was committed to the Marſhal of the *Marſhalſea* for a Contempt, the Plaintiff cannot declare againſt him there without Leave of the Court, *R. Ray.* 58.

So, if he was committed for any other Miſdemeanor. *R.* 1 *Sid.* 154.

So, if a Man attainted be pardoned, he ſhall not be charged with an Action *in Cuſtod. Mareſcalli*. *R. Sal.* 500.

Yet if the Plaintiff declares againſt a Man *in Cuſtodia Mareſcalli*, when committed for a Miſdemeanor; *quod fieri non debuit, factum valet*. *Ray.* 58. 1 *Sid.* 90.

So, if the Plaintiff declares againſt him there, and he is afterwards removed to the *Fleet*, the Plaintiff may proceed in *B. R.* and after Judgment remand him by *Habeas Corpus* to the Marſhal. *D.* 1 *Sid.* 100.

If the Defendant be in *B. R. in Cuſtod. Mar.* at the Suit of any one, the ſame Plaintiff may declare againſt him in another Action, in the ſame or a ſubſequent Term.

So a Stranger may declare againſt him in the ſame Term. *R. Poph.* 145, 6. *Adm.* 1 *Sal.* 2.

But, in an Appeal, if the Sheriff returns *Cepi Corpus*, the Plaintiff cannot declare againſt him in *B. R.* but upon the Original, on which the *Cepi Corpus* was returned; for there is no Reaſon to commit the Defendant to Priſon, when he is ready to anſwer the Writ, on which he was taken. *R.* 1 *Rol.* 581. *l.* 15.

So a Man, not in actual Cuſtody, but upon Bail, is not liable to all other Actions. 1 *Sal.* 1.

So, if he is not in actual Cuſtody, he may plead the Privilege of *C. B.* tho' he be arreſted by Proceſs of *B. R.* and is thereby ſuppoſed to be *in Cuſtodia Mareſcalli*. *R.* 1 *Sal.* 1.

[A De-

[A Declaration againſt a Defendant as a Priſoner, muſt mention at whoſe Suit.]

[But if it is in Debt, and ſays the *Latitat* was *de placito quod reddat* to the Plaintiff, it is ſufficient; for it muſt be underſtood it was at his Suit. *Morris* v. *Watkins*, *P.* 10 *G.* [2 *Ld. Raym.* 1362.]

[And if it does not mention at whoſe Suit, Defendant may demur generally. *Williams* v. *Wills*, *H.* 19 *G.* 2. *Wilſon* 119.]

(C. 9.) Addition not neceſſary, nor Recital of a Plaint.

In *B. R.* the Defendant's Addition is not neceſſary, for the Declaration is not founded on an Original, and therefore is not within the *St.* 1 *H.* 5. 5.

So a Recital of the Plaint is not neceſſary.

Nor a Recital of the Original at large, where the Suit is there by Original. *R. Carth.* 108.

But in Account and Debt the uſual Form is to ſay, *A. queritur de B. in Cuſt. Mar. &c. de placito quod reddat ei* 10*lb. &c. pro eo videlicet quod cum, &c.*

In Covenant, *De placito Conven' fract'*. 2 *Sand.* 361.

In Caſe and Ejectment, *A. queritur de B. in Cuſt' Mar. &c. pro eo videlicet quod cum, &c.*

Yet the Bill or Plaint ought to be filed. 2 *Cro.* 186.

And if the Bill be filed before Cauſe of Action, it is Error. *Vide Action*, (E.)

So, if there be a material Variance between the Bill and Declaration. *R. Lat.* 58. 2 *Cro* 294. *Vide Variance between Original and Declaration*, *Poſt*, (C. 13, 14, 15.)

When it may be amended. *Vide Amendment*, (D. 7, 8.)

So a new Bill may be filed by Leave of the Court, where the Old one may have been loſt. *R.* 2 *Cro.* 186.

So a Declaration upon a Bond, Indenture, or other Deed does not conclude with a *Profert in Cur. &c.* but after Mention made of the Deed is added *Curiæque dict' Domini Regis nunc hic oſtenſ'*.

If the Plaintiff declares by ſuch an One, his Attorney, omitting his Chriſtian Name, it is Error. *R.* 1 *Rol.* 336. *Vide Attorney*, (B. 7.)

(C. 10.) When Money may be brought into Court.

[The firſt Motion to bring Money into Court was in *Kelyng*'s Time, and introduced to avoid the Hazard and Difficulty of pleading a Tender. *Str.* 787.]

If the Declaration be for a large Sum of Money, where only a ſmall Sum is due, on Motion of the Defendant, and Payment into Court of the Sum due and Coſts to the Time of the Motion, the Plaintiff ſhall proceed for the Reſidue at his Peril.

And in *B. R.* if the Defendant produces the Rule at the Trial, and the Jury do not give Damages above the Sum paid into Court, the Plaintiff will be nonſuited and muſt pay Coſts to the Defendant.

So in *C. B.*

And the Plaintiff ſhall have the Money brought into Court; tho' he be nonſuit. *Sal.* 597.

[Wherever the Sum demanded is certain, or may be aſcertained by Computation, without any other Diſcretion left to the Jury, (as Money due for Freight and Demorage) it may be paid into Court. *Hallet* v. *Eaſt-India Company*, *H.* 1 *G.* 3. 2 *B. M.* 1120.]

[So in Covenant, where the Breach aſſigned is a Sum certain. *Barnes* 284.]

And this is allowed in all perſonal Actions, where the Debt demanded is certain; As in Debt. 1 *Vent.* 356. *Sal.* 597.

[On Bond to ſecure Annuity. *Barnes* 288.]

[It may on Debt for Rent, and *nil debet* pleaded; ſo in Covenant for Nonpayment of Rent. *Barnes* 280.]

[In Debt for killing a Hare, Defendant may bring Penalty and Coſts into Court, (if no other Count). *Webb* v *Punter*, *M.* 18 *G.* 2. *Str.* 1217.]

In *Indebitatus Aſſumpſit*. 1 *Vent.* 356.

So in *Indebitatus Aſſumpſit* and *Quantum meruit*; tho' the *Quantum meruit* is uncertain. *Dub. per Holt, but afterwards agreed.* *Sal.* 597.

So in Covenant, for Non-payment of Rent. *R. Sal.* 596. *Per C. B.* 3 *Geo.*

So in Covenant to find Diet or pay 10*l.* 2 *Mod. Ca.* 305.

In Replevin where the Defendant avows for Rent. *Sal.* 597. 2 *Mod. Ca.* 379.

[In Trover for Money, he ſhall bring the whole Money declared for into Court. *Anon. H.* 5 *G. Str.* 142.

In Ejectment where the Entry was for Non-payment of Rent. *Sal.* 597. *Per C. B.* 3 *Geo.*

And now by the *St.* 4 *Geo.* 2. 28. If the Tenant at any Time before Trial in Ejectment pay to the Leſſor or his Attorney, or into Court, all the Rent due and Coſts, all Proceedings in the Ejectment ſhall ceaſe.

So after Judgment Execution ſhall be ſtayed. 2 *Mod. Ca.* 345.

[On Bond with Penalty, conditioned to pay Money by Inſtalments, and Action brought on Failure of one Payment, Proceedings ſhall not be ſtayed on paying the Sum then due, and Coſts. *Land* v. *Harris*, *P.* 8 *G. Str.* 515. *Contra*, *Bridges* v. *Williamſon*, *M.* 2 *G.* 2. *Str.* 814. *Mayne* v. *Somner*, *H.* 4 *G.* 2. *Ibid.*]

[In Debt on Bond to pay Money by Inſtalments, on Failure of the firſt Payment Plaintiff ſhall have Judgment; but ſhall not take out Execution, but as the Payments become due. *Darby* v. *Wilkins*, *M.* 7 *G.* 2. *Str.* 957.]

[Paying all the paſt Inſtalments, with Intereſt and Coſts, is ſufficient; and if more Money is brought into Court, it may be ordered out of Court to the Party who brought it in. *Lucas* v. *London*, *M.* 11 *G.* 2. *Str.* 958.]

[On Bond to pay a groſs Sum at a Day certain, defeazanced afterwards by Articles to pay by Inſtalments at Days therein mentioned, provided he pays punctually, and lives till all the Days are paſt, otherwiſe Defeazance to be void; Obligor makes Default, the groſs Sum muſt be paid; and on Action againſt him, he cannot pay in the Money due on Inſtalments only, even tho' Obligee, after the Default, received Intereſt on all remaining due. *Bonafous* v. *Rybot*, *P.* 3 *G.* 3. 3 *B. M.* 1370.]

[If Plaintiff in a Bill in Equity offers to pay Money (an Inſurance-Premium) to Defendant, and an Iſſue is directed wherein he is Defendant, this Offer is the ſame as if the Money had been actually brought into Court. *Wilſon* v. *Ducket*, *M.* 3 *G.* 3. 3 *B. M.* 1361.]

But where the Action is only for Damages, Defendant ſhall not be allowed to pay any Sum into Court upon Motion: As in Covenant. *R.* 1 *Vent.* 356. If it be for not repairing. *Sal.* 596.

[So in an Action for immoderately driving a hired Chaiſe. *White* v. *Woodhouſe*, *M.* 1 *G.* 2. *Str.* 787.]

[In Debt for a Fine in a Manor-Court, Money cannot be brought into Court. *Gold* v. *Freame*, *H.* 1722. *Bunb.* 124.]

In Trover for Goods certain, he ſhall not be allowed to bring the Goods into Court. *Sal.* 597.

[In Trover for a ſpecific Chattel of certain Value, which muſt be the ſole Meaſure of Damages, the Thing demanded may be brought into Court, or ordered to be delivered to Plaintiff. *Fiſher* v. *Prince*, *M.* 3 *G.* 3. 3 *B. M.* 1363.]

[But where Quantity or Quality is uncertain, or *Tort* may enhance Damages above *real* Value, and no Rule to eſtimate additional Value, it ſhall not. *Ibid.*]

[And tho' Court orders the Goods to be delivered to Plaintiff, he may ſtill proceed for Damages at Peril of Coſts. *Ibid.*]

[A laced Head, for which *Trover* is brought, cannot be brought into Court. *Bowington* v. *Parry*, *H.* 2 *G.* 2. *Str.* 822.]

[Nor Pictures. *Olivant* v. *Perineau*, *T.* 16 *G.* 2. *Str.* 1191. *Wilſ.* 23.]

[But the Court may make Rule to ſhew why the Goods and Coſts ſhould not be accepted. *Barnes* 281.]

[But the Court will not do this, if the Goods have been altered. *Barnes* 284.]

[Money cannot be brought into Court in Debt *ſur emiſſet*, for Goods ſold. *Leapidge* v. *Pongillione*, *H.* 4 *G.* 2. *Str.* 890.]

[It cannot be brought on a Bond from Bailiff for his good Behaviour, and Payment of Money to the Sheriff's Uſe. *Barnes* 285.]

[Nor in Debt on Bond for Performance of Covenants in a Leaſe. *Barnes* 286.]

[Nor for the Penalty of a Charter-Party. *Barnes* 285.]

[Nor in an Action for Dilapidations. *Squire* v. *Archer*, *T.* 5 *G.* 2. *Str.* 906.]

[Money cannot be brought into Court in Debt for Rent, but the Court will refer it to the Maſter to compute what is due, on Defendant's undertaking to pay. *Lee* v. *Iriſh*, *M.* 9 *G.* 2. *B. R. H.* 173.]

[Nor on Covenant, if Defendant is to render beſt Beaſt for Heriot, or Money, at Plaintiff's Election. *Barnes* 289.]

[Nor on Debt on Bill penal, with Count added on a *Mutuatus*, but after Verdict the Court will not ſet it aſide. *Barnes* 283.]

[It cannot in an Action of Treſpaſs for the Meſne Profits, againſt Tenant in Poſſeſſion, after Judgment in Ejectment againſt the caſual Ejector, for this Action is for a *tortious* Occupation. *Holdfaſt* v. *Morris*, *H.* 33 *G.* 2. 2 *Wilſ.* 115.]

In Replevin where he avows for *Damage-feaſant*. 2 *Mod. Ca.* 379.

[In Replevin, after Declaration and before Avowry, Proceedings may be ſtaid, on Payment of Rent diſtrained for and Coſts. *Barnes* 429.]

Yet by the *St.* 4 & 5 *Ann.* 16. In an Action on a Bond with a Penalty, if the Defendant brings into the Court, where the Action depends, all the Principal and Intereſt due, and all Coſts expended in any Suit in Law or Equity upon ſuch Bond, the Money brought in ſhall be taken in full Satisfaction of ſuch Bond, and the Court may give Judgment to diſcharge the Defendant of and from the ſame.

[Plaintiff brought Debt on Bond againſt Defendant Adminiſtrator, filed a Bill for Diſcovery of Aſſets, and inſtituted a Suit for an Inventory; Judgment for Plaintiff reverſed on Error; new Action brought; and Defendant moves to ſtay Proceedings, on 4 & 5 *Ann.* on Payment of Principal, Intereſt and Coſts; and the Court directed Coſts only of that ſecond Suit, though the Words of the Act are, *all Coſts in any Suit in Law or Equity on ſuch Bond.* *Siſney* v. *Nevinſon*, *P.* 12 *G.* *Str.* 699.]

[If Defendant moves to ſtay Proceedings in Debt on Bond, on Payment of Principal, Intereſt and Coſts, and there is a Suit in Equity for the ſame Matter, he ſhall pay the Coſts there alſo. *Lock* v. *Shermer*, *P.* 8 *G.* 2. *B. R. H.* 116. *Vide Siſney* v. *Nevinſon*, *ante*, *contra*.]

So, before this Statute, if the Penalty of the Bond was brought into Court by Rule, it was referred to the Maſter or Prothonotary to tax the Principal, Intereſt and Coſts for the Plaintiff, and the Reſidue was returned to the Defendant. *Mod. Ca.* 101. *Sal.* 597.

And the Court will not oblige to the Payment of another Debt in Conſcience, before Relief. *Mod. Ca.* 101.

So, in Covenant, if the Breach is aſſigned for Non-payment of Rent or a Sum certain. *Per King Ch. J. Hil.* 3 *Geo.*

So in Ejectment upon a Condition broken for Non-payment of Rent. *Per King Ch. J. Hil.* 3 *Geo.* (*Vide* 2 *Str.* 900.)

But a Proffer after Notice of Trial ſhall not be allowed, if the Payment be not ſo ready as not to delay the Trial. *Mod. Ca.* 25.

So it ſhall not be allowed in Debt on a Judgment. *Mod. Ca.* 60.

[If the Money is not paid into Court when Defendant has pleaded Tender with a *Profert in Cur.* it is no Plea, and Plaintiff may ſign Judgment. *Pether* v. *Shelton*, *M.* 12 *G.* *Str.* 638.]

[It may be paid in at any Time before Plea pleaded. *Barnes* 279, 281.]

[The Court will not allow Money to be paid in after Plea pleaded. *Thornton* v. *Gibſon*, *H.* 20 *G.* 2. 1 *Wilſ.* 157. *Barnes* 286, 349.]

[Nor after Judgment for want of Plea. *Barnes* 281, 285.]

[After Iſſue joined, it cannot be increaſed. *Barnes* 282, 286.]

[After General Iſſue pleaded, the Court will give Leave to withdraw it, in order to bring Money into Court, and replead it. *Tarlton* v. *Wragg*, *T.* 21 *G.* 2. *Str.* 1271.]

[Or to withdraw Plea, pay in Money, and plead General Iſſue on Terms. *Barnes* 362.]

[Or to withdraw, pay Money, and plead the ſame Plea. *Barnes* 289.]

[The

[The Court will give Leave to pay Money as to ſome Counts, and to the Reſt to plead General Iſſue, Statute of Limitations, and ſet off Bankruptcy, but not to demur. *Barnes* 286, 350.]

[And to plead General Iſſue, and *plene Adminiſtravit*. *Barnes* 287.]

[If Plaintiff replies after Money paid in, he cannot afterwards take it out and enter Acquittal, without Leave of the Court, and Payment of Defendant's Coſts. *Barnes* 357.]

[A *Pauper* Plaintiff ſhall have the Money out of Court, tho' the Verdict is for Defendant; if not a Pauper, Defendant would have it towards his Coſts. *Lee* v. *Holland*, *T.* 1730. *Bunb.* 287.]

[If Plaintiff recovers a leſs Sum, Defendant ſhall have the Money towards his Coſts. *Barnes* 280.]

[Money brought into Court on pleading a Tender, cannot be taken out by Defendant towards his Coſts, tho' he has a Verdict. *Cox* v. *Robinſon*, *H.* 9 *G.* 2. *Str.* 1027. *B. R. H.* 206.]

[If Defendant does not pay the Coſts taxed, tho' Plaintiff recovers leſs than the Money paid into Court, yet he ſhall have his Coſts. *Hand* v. *Dinely*, *H.* 18 *G.* 2. *Str.* 1220.]

[If Defendant refuſes to pay Coſts, Attachment ſhall go. *Barnes* 283.]

[Though Plaintiff dies before Trial, Defendant cannot have back the Money. *Barnes* 281.]

[After Refuſal, or Iſſue joined, Plaintiff may have it and Coſts, to the Time of paying in, he paying Defendant ſubſequent Coſts. *Barnes* 280, 282, 284, 287, 357.]

[Plaintiff ſhall have the Money, tho' Judgment is arreſted. *Barnes* 284.]

[It may be brought into Court in an Action at the Suit of an Executor, and he ſhall loſe Coſts, but not pay them. *Crutchfield* v. *Scott*, *P.* 1 *G.* 2. *Str.* 796. *Barnes* 289.]

[If Plaintiff is an Adminiſtrator, and not ſo named, Rule ſhall be diſcharged. *Barnes* 280.]

[It ſhall not be paid back to Executors on Defendant's Death. *Barnes* 279.]

[It is not of Courſe, if Plaintiff is an Executor. *Barnes* 279.]

[*A.* is indebted to *B.* 2 *l.* 5 *s.* for Rent, and is always ready to pay; *B.* keeps out of the Way, and brings Action; *A.* ſummons him before a Judge to ſhew Cauſe, why, on Payment of Debt and Coſts, Proceedings ſhould not be ſtaid; *B.* pretends other Demands, which obliges *A.* to obtain the Common Rule to pay the Money into Court with Coſts; *B.* applies to take the Money, and have the Coſts taxed; this is oppreſſive, and the Court will diſcharge the Rule as to Coſts. *Johnſon* v. *Houlditch*, *P.* 31 *G.* 2. 1 *B. M.* 578.]

(C. 11.) In *C B.* muſt be upon an Original, &c.

But all Declarations in *C. B.* are founded on an original Writ, original Bill, or upon an Attachment of Privilege. *Lut.* 228.

And therefore, if the Declaration there begins with a *Queritur*, as in *B. R.* it is Error. *R. Lut.* 228.

The antient Courſe in *C. B.* was, that the Plaintiff declared upon the Appearance, and after Imparlance made a Declaration *de novo*. 2 *Cro.* 89.

But the firſt Declaration was the Foundation and Warrant for the Second. *Ibid.*

And if there was no Original, it was Error at the Common Law.

So, if there was no Writ of Privilege filed, where the Suit is by Attachment of Privilege. *R.* 2 *Cro.* 418.

So, if the Plaintiff declared twice on the ſame Original, and one Declaration varied from the other. *R. Cro. El.* 416.

But the Want of an Original is aided after Verdict by the *St.* 18 *El.* 14. *Vide Amendment*, (D. 6.)

And now by the *St.* 4 & 5 *Ann.* 16. after Judgment by Confeſſion, *Nil dicit*, *Non ſum informi*, or after a Writ of Inquiry executed, all Defects are aided, as after Verdict, ſo as there be a Writ, Original, or Bill duly filed.

[An original Writ of the Term in which final Judgment is given, will not warrant that Judgment, if it appear on the ſame Record that there have been

been Proceedings of a preceding Term. *Dyke* v. *Sweeting*, *H.* 21 *G.* 2. 1 *Wilſ.* 181.]

[The Memorandum need not ſet out in what Plea, for the Original being recited *verbatim*, ſhews itſelf. *Barnes* 331, 333, 336.]

[If the Original is returnable the ſecond Return of the Term, tho' the *Placita* are entered generally of the ſame Term, it is well enough; for the whole Term may be conſidered as one Day, and in *C. B.* there are no ſpecial *Placita*. *Philipps* v. *Philipps*, *T.* 11 & 12 *G.* 2. *Andr.* 248.]

[But in *B. R.* where a Debt accrues in Term Time, and in the ſame Term the Party comes and complains, he muſt have a ſpecial Memorandum to ſhew that the Cauſe of Action precedes the bringing it. *Ibid.*]

[And after Verdict, any Default of this Nature would be cured by *St.* 5 *G.* *c.* 13. in which penal Actions are not excepted. *Ibid.*]

(C. 12.) How the Original ſhall be recited.

And when the Suit is upon an Original, the Original ſhall be recited in the Declaration ſhortly.

As in Account, Annuity, Covenant, Debt, Detinue and Replevin, (in which Actions the Original is a Summons) the Declaration ſhall be *A. &c. ſum, fuit ad reſpondendum Q. de Placito, &c.*

And in Actions on the Caſe, Ejectment, Treſpaſs, *&c.* (where the Original is an Attachment) the Declaration ſhall be *A. &c. attach' fuit ad reſpondendum Q. de Placito.*

And in Actions upon the Caſe, *&c.* where the Writ contains the Caſe at large, the Writ antiently was recited at large in the Declaration.

But, now, *by Rule of Court*, the Declaration ought not to recite all the Original, but it is ſufficient to mention the Nature of the Action, as *A. attach' fuit ad reſpondendum Q. de Placito Tranſgreſſionis ſuper Caſum.* *C. Att.* 296.

So in perſonal Actions on a general Statute, except in Debt. *C. Att.* 296. *Per Rule* 1654. *Mills* 26.

So in Actions upon the Caſe, or a general Statute by Original in *B. R.* *C. Att.* 357.

The Original recited is Part of the Declaration, and therefore in Treſpaſs, if the Writ be recited to be *Vi & Armis* it is ſufficient, tho' that be afterwards omitted. *R. Lut.* 1509. *Vide Poſt*, (3 M. 7. C. 86.)

If the Writ for taking of Goods ſays *Pretii* or *ad Valentiam, &c.* it is ſufficient, tho' it be omitted in the Declaration. *R.* 1 *Sid.* 150. 2 *Cro.* 654.

If the Writ ſays *Bona & Catalla ſua*, and the Declaration omits *ſua*. *R.* 1 *Sid.* 187. *R. Lut.* 1509.

But a vicious Recital of an Original does not hurt the Declaration, if the Writ itſelf, upon *Oyer*, be not bad: As, in Replevin *de Capt. Averiarum* for *Averiorum*. *R. Sal.* 701.

(C. 13.) Muſt be conformable to the Original.

And the Declaration ought to be conformable to the Writ. *Co. Lit.* 303. *a.*

And for Variance between the Count and the Writ the Defendant may plead in *Abatement*. *Vide Abatement*, (G. 8.) *And ſee there for what Variance a Plea in Abatement is good.*

So a material Variance between the Count and the Writ is Error: As, if the Count demands more, or leſs, than the Writ, as where the Writ is *quare Clauſum fregit*, the Count *quare Clauſa*. *R. Cro. El.* 185. *Vide Poſt*, (3 M. 6.)

So, if the Writ be *quare Cauſum fregit et Herbam ibidem conculcavit*, and the Count omits *fregit*; for then the Count omits the Treſpaſs for the Entry into the Cloſe, which was in the Writ. *R. per* 2 *J. Ventris cont.* becauſe the treading down the Graſs in the Cloſe imports an Entry into it. 2 *Vent.* 153.

So a Writ in Replevin *de Averiis, &c.* a Count *de Equo*. *R. Cro. El.* 330. 7 *Ed.* 4. 31. *b.* *R. Lut.* 1181.

So, in Forger of falſe Deeds, a Writ of divers falſe Deeds, and a Count of a Deed of Feoffment. 35 *H.* 6. 37.

If a Writ in Treſpaſs be *contra Pacem nuper Regis*, and the Declaration *contra Pacem Regis nunc*. 11 *H.* 4. 15. 2 *Ed.* 4. 24. *b.*

So

So a Writ for Goods *ad Valentiam* 20*l.* Declaration *ad Valentiam* 40*l.* *R. Cro. El.* 308.

So, in an Action on the Caſe for a Nuſance, if the Writ be *for raiſing a Yard* and the Declaration adds *digging a Gutter*. *R. Cro. El.* 829.

So, in Debt, if the Writ be *in Placito Debiti* 10*l.* and the Plaintiff declares for 20*l.* *R. Cro. El.* 434.

So, if a Writ of Waſte be againſt the Defendant *ex Dimiſſione A.* and the Count ſhews a Feoffment to *B.* who ought by Recovery to declare the Uſe to the Defendant, it is bad; for it ought to have been (as appears by the Declaration) *ex Dimiſſione B.* *R. Cro. El.* 722.

If the Writ be on the Demiſe of the Predeceſſor, and the Count on the Demiſe of himſelf, or *e contra*. *R.* 1 *Rol.* 432.

(C. 14.) When a Variance ſhall be aided.

And a material Variance is not aided by Verdict. *R. Cro. El.* 185, 829, 330, 722. *R.* 2 *Vent.* 153. *Per Powell acc. but Treby cont. Lut.* 1181. *Vide Amendment*, (D. 18.)

But Miſpriſion of one Original for another, as *ſummoned* for *attached*, is only Form, and aided by Verdict. *Semb.* 2 *Cro.* 108. *Cro. Car.* 91. 4 *Mod.* 246.

[In an Action on the Caſe, if the Writ is recited *Summonit.* inſtead of *Attach.* it is well. *Brown* v. *Morgan*, *M.* 4 *G.* 2. *Fort.* 341.]

[So, on Debate, in the Caſe of a Member of Parliament. *Lockyer* v. *Chetwynd*, in *C. B.* *Fort.* 341.]

So, if the Original be certified in one County, where the Action was in another, it ſhall not be intended the Original in the ſame Cauſe, but rather that there was no Original, and this is aided by the Statute. *R.* 2 *Cro.* 655. 674. *Vide Amendment*, (D. 8.)

Or of another Term, or between other Parties. *R. Cro. Car.* 327. *R.* 3 *Mod.* 136.

[Special Original in *L.* Plaintiff declares in *M.* Defendant takes the Declaration out of the Office, Plaintiff ſues out new Original in *M.* Proceedings ſhall not be ſet aſide. *Barnes* 415.]

So, if the Original recited in Treſpaſs be only for one Day, the Declaration for Treſpaſs on ſeveral Days. *R.* 4 *Mod.* 246.

If the Original certified was ſuch, as the Defendant was outlawed upon; for then the Plaintiff may declare upon that or upon a new Original. *R. Jon.* 442, 3.

So if, upon no Original being aſſigned for Error, Diminution be alledged, whereupon the *Cuſtos Brevium* certifies an Original of the Term in which the *Placita* is entred, which is a Variance; it may be ſuggeſted that there is another Original in the ſame, or a precedent Term, and there ſhall be another *Certiorari* for it. *R.* 1 *Sal.* 267.

So, on a *Certiorari* for an Original, the Continuances ought not to be returned. 1 *Sal.* 269.

Otherwiſe, if it be only a Miſpriſion or ſmall Variance, in the Name of the Party, or in the Time, between the Original certified and the Declaration. *Vide Amendment*, (D. 8, 9.)

[In Action for a falſe Return, if Declaration ſets forth a *Fieri Facias*, and a Warrant to levy ſo much which he had recovered againſt *A.* and the Warrant is, to levy of the Goods of *A.* ſo much as he had recovered againſt ———, (omitting the Name) it is good, the *Fieri Facias*, being right. *King* v. *Morris*, *T.* 5 *G.* 2. *Str.* 909.]

(C. 15.) What Variance is not fatal. Special Count upon a general Writ.

So a ſpecial Count on a general Writ is good. *Vide Abatement*, (G. 8.)

As in Aſſize *de libero Tenemento*, if the Plaint is made *de* 4 *Acris Saliceti Commun' Eſtoverior'*, and of ſeveral Rents. *R.* 8 *Co.* 47, 8.

In Aſſize of *frequent Diſtreſs*, if the Plaint is, that he was ſo often diſtrained that he could not manure. 8 *Co.* 50. *b.*

In *Quare Impedit* for the King *præſentare ad Eccleſiam quæ ad noſtram ſpectat Donationem* generally, the Count may be ſpecial, *quæ ſpectat Ratione Prærogativæ ſuæ Regiæ. R. and aff. in Parl. on a ſpecial Demurrer for that Cauſe. Ca. Parl.* 164.

In *Quare Imp. præſentare ad Eccleſiam* generally, the Count may ſhew, that he has only two Turns, *&c.* 5 *Co.* 102. *b.*

So a Variance, by the Addition of a Thing not material is not fatal: As in Treſpaſs for an Aſſault and Battery, the Plaintiff declares that the Defendant ſtruck the Horſe on which the Plaintiff rode, *per quod* the Plaintiff fell; The Variance between the Writ which ſpeaks only of the Battery of himſelf, and the Count which ſpeaks alſo of the Battery of the Horſe, is not material; for the Stroke to the Horſe is only Inducement to the Battery of the Plaintiff himſelf, and not alledged as the Ground of the Action. *R. Mar. Pl.* 107.

So a Variance as to Damages between the Writ and the Declaration is not material. *R.* 2 *Cro.* 128, 629. *Vide Poſt,* (C. 84.)

(C. 16.) Pledges found upon a Declaration.

The Plaintiff in *B. R.* or *C. B.* ought to find Pledges *de proſequendo*; for if he be nonſuit he ſhall be amerced. 2 *Cro.* 414.

And he muſt find them on a Bill, where the Clauſe *ſi fecerit te ſecur' &c.* is not inſerted, as well as upon an Original.

So an Attorny ought to find them, tho' he ſues by Attachment of Privilege, where ſuch Clauſe is not inſerted. *R. Dy.* 288. *a. R. Cro. Car.* 92. *Hut.* 92. *R.* 2 *Lev.* 39.

When Pledges ſhall be found in Replevin, *Vide Poſt.* (3 K. 5.)

The Nature of Pledges. *Vide Bail,* (A. C.)

They ſhall be found in Debt *qui tam.* 1 *Lev.* 123.

But the King or an Infant doth not find Pledges; for they ought not to be amerced. 8 *Co.* 61. *b. R. Cro. Car.* 161. 4 *Inſt.* 180. 2 *Leo.* 185.

So they are not found on an Information. *R.* 1 *Lev.* 123.*

* But the *St.* 4 *&* 5 *W. & M.* 18. requires Security to be given for Coſts.

And the Pledges ſhall be found on the Purchaſe of the Writ in *Chancery. R.* 2 *Cro.* 414. 3 *Bulſtr.* 279.

Or before the Sheriff, who may refuſe to execute the Writ, and return *No Pledges found.* 2 *Cro.* 414.

Yet he may execute the Writ before Pledges found, if he pleaſes. 2 *Cro.* 414.

For it is ſufficient if they are found at any Time, pending the Plea. 2 *Cro.* 414. *Mar.* 46. 4 *Inſt.* 180. *Jon.* 177.

At any Time before Judgment, tho' it be in Appeal. *R.* 2 *Jon.* 154. *Cont.* in Appeal. 2 *Sho.* 159.

[On Demurrer, and for Cauſe that no Pledges are on the Writ, or mentioned in the Declaration, Judgment *pro quer.* for he may enter Pledges at any Time before Judgment. *Mansfield* v. *Richman. P.* 2 *G.* 2. *Fort.* 330. *Barnes* 163.]

[On ſpecial Demurrer, for that Declaration is without Pledges, if the Paper-Book with Pledges added is delivered to Defendant, and he does not take Notice of it, it is a Waiver of the Irregularity, and he is too late when it is ſet down for Argument. *Umfreville* v. *Lock, M.* 10 *G.* 2. *B. R. H.* 315.

[On ſpecial Demurrer, on Action by Bill, and for Cauſe, *no Pledges*; Plaintiff may have Leave to amend, and add Pledges. *Watſon* v. *Richardſon, T.* 21 *&* 22 *G.* 2. 1 *Wilſ.* 226.]

And after Judgment and Error brought, Want of Pledges may be amended by the Sheriff. *R.* 3 *Lev.* 345.

The Pledges are uſually entred on the Bill or Declaration at the End of the Count. *Dy.* 288. *a.* 4 *Inſt.* 180.

And, if no Pledges were found, it was Error by the Common Law. *R.* 2 *Cro.* 414. *R. Dy.* 288. *a. R.* 3 *Bul.* 61. *R. Mar. pl.* 40. *Cro. Car.* 594.

And

And the Omiſſion was not aided by the *St.* 18 *El.* 13. 2 *Cro.* 414. 3 *Bul.* 278. *R. Cro. Car.* 92. But *Hut.* 92. *makes a Quære. Acc.* 1 *Sid.* 84. *Per* 2 *J. Windh. cont. Ray.* 51. *R. Dy.* 288. *a. in Marg. Jon.* 177.

The Omiſſion is Subſtance. *R.* 3 *Lev.* 39.

But, if there be no Original, that is aided, and the Pledges are to be entred on the Original; and therefore Want of Pledges is no Error when there is an Original wanting. *R.* 1 *Sid.* 84. *R. Jon.* 177.

And by the *St.* 16 & 17 *Car.* 2. 8. After Verdict no Judgment ſhall be ſtayed or reverſed in the Courts of *Weſtminſter*, County Palatine, or Grand Seſſions of *Wales*, becauſe no Pledges, or but one, are returned on the Original.

And by the *St.* 4 & 5 *An.* 16. No Exception ſhall be taken for Default of entring Pledges on the Bill or Declaration, unleſs it be ſpecially ſhewn for Cauſe of Demurrer.

So, if Pledges are omitted, after Error brought for it and aſſigned, the Court will permit Pledges to be entred. *R.* 3 *Lev.* 361.

[Want of Pledges cannot be taken Advantage of in Error, tho' the Judgment was by Default. *How* v. *Denin*, *T.* 2 *G.* 3. 2. *Wilſ.* 142.]

So, if an Infant attains his full Age before Judgment, and no Pledges appear to be entred, it is not Error; for if Pledges were neceſſary when he came of Age, they mignt have been entred before his Age on the Writ. *R. Jon.* 177.

(C. 17.) Count or Declaration muſt have Certainty.

And the Count in every Court ought to have Certainty and Truth. *Co. Lit.* 303. *a. Pl. Com.* 84, 122.

And the Certainty ought to be ſuch, that the Court may give Judgment upon it, the Defendant anſwer to it, and a good Iſſue be joined thereon. (*Vide Co. Lit.* 303. *a. Pl. Com.* 84.)

(C. 18.) Certainty of Parties.

And therefore the Parties, Demandant or Plaintiff, Tenant or Defendant, ought to be well named.

What ſhall be a Miſnomer of the Plaintiff or Defendant, *Vide Abatement*, (E. 18, 19. F. 17, 18, &c.)

When the Omiſſion or Miſtake of the Name of a Party vitiates the Count, or not. *Vide Action on the Caſe.* (H. 2.)

[Any Variation in the Name of a Corporation is fatal; as *Auſtrialia* for *Auſtralia*. *Turvil* v. *Aynſworth*, *M.* 1 *G.* 2. *Str.* 787. *Ld. Raym.* 1515.]

If a Declaration by *A. B.* ſhews a Title *cuidam A. B.* it cannot be intended to be the Plaintiff. *R.* 2 *Lev.* 207.

If it charges *quod prædict A. B. depoſuit*, where two of the ſame Name are mentioned before, it ſhall not be intended to be the Defendant. *R. Cro. El.* 267.

But where there is Mention of a Manor or Name before expreſſed, it ſhall be intended the ſame, tho' *prædict* is omitted. *R.* 2 *Cro.* 192.

[If Plaintiff and Defendant have the ſame Name, if it appears on the Record which is which, as on *Oyer* of a Bond from *A. B.* of *C.* to *A. B.* of *D.* and the Declaration begins *A. B.* of *C.* was ſummoned, *&c.* it is ſufficient, tho' the Addition is not repeated again. *John Connor* v. *John Connor*, *T.* 8 *G.* 3. 2 *Wilſ.* 386.]

[The *alias dict.* muſt be in the ſame Language as in the Deed. *Barnes* 241.]

(C. 19.) Certainty of Time.

So the Time of a Matter charged in the Declaration ought to be certainly alledged; And therefore in *Aſſumpſit*, if the Plaintiff omits the Day when the Promiſe was made, it is bad. *Yel.* 94.

So, in Trover, if he omits the Time of the Converſion. *Cro. El.* 97.

If he declares on a Leaſe for Years made to him, he ought to ſhew the Day when the Leaſe was made. *Pl. Com.* 24. *a.*

So in all Caſes where the Day or Time is iſſuable. *Pl. Com.* 24.

So

So the Time of every Fact, material to maintain the Declaration, ought to be alledged: As, in Trover, the Time of the Converſion as well as the Time of the Poſſeſſion by the Plaintiff, and of the Finding by the Defendant ought to be alledged. *R.* for the Converſion is material and traverſable. *Cro. El.* 97, 98.

In *Reſcous* of a Diſtreſs for Rent, the Days of Payment of the Rent ought to be alledged. *Kitt.* 227. *a.*

In Treſpaſs for detaining his Servant, the Plaintiff ought to ſhew the Time of his Retainer. *Pl. Com.* 24. *a.*

If the Defendant pleads a Releaſe, he ought to ſhew the Day of the Making of it. *Pl. Com.* 31. *a.*

So, if no Time be alledged but after a (*viz.*) and the Time there mentioned be repugnant, by Reaſon of which the *viz.* ſhall be rejected, then the Declaration is bad for Want of Time. *Lat.* 201. *Vide infra.*

If the Defendant pleads a Fact, which is traverſable, but not local, he ought to alledge it to be at the Time and Place mentioned in the Declaration. *R. Lut.* 14.

But, it is ſufficient if the Time be in the Declaration, tho' it be not in the Writ recited by the Declaration. *Vide ante*, (C. 12.)

Or if a Thing may be coupled to a Time before alledged: As in Treſpaſs *quare Clauſum fregit et adtunc et ibidem Inſult' fecit et Ciſtam cepit*, it is good, tho' no Time is repeated for the Taking of the Cheſt. *R.* 2 *Cro.* 443.

[On Information in Debt, for Duties of Goods imported in *May*, Evidence may be given of ſeveral Importations at ſeveral Times. *Attorny-General* v. *Hatton*, *H.* 1728. *Bunb.* 262.]

[On Information in Debt for Non-payment of Duties, Evidence may be given of an Importation ſeveral Years before the Time laid; but the Court will, on Application, confine the Evidence to a certain Time. *Attorny-General*, v. *Weeks M.* 1726. *Bunb.* 223.]

In *Aſſumpſit* if it be alledged that *A.* determined *quod prædict'* 100 Guineas *fuer' Valoris, &c. viz. apud B. R. Lut.* 487.

Or, if Time be alledged to a Thing tantamount: As in Trover, if the Plaintiff ſhews a Time of Requeſt and Refuſal to deliver, tho' no Day of Converſion be alledged, it is ſufficient; for a Refuſal to deliver on Requeſt amounts to a Converſion. *R. Cro. Car.* 262.

So to a negative Matter no Time need be alledged. *Pl. Com.* 24. *a.*

So in real Actions no certain Time is neceſſary, for *Tempore Pacis*, *Tempore Dom. Reg. nunc*, or *nuper Reg.* is ſufficient. *R. Sal.* 561.

So in *Quare impedit. R. Sal.* 561.

And if a more certain Time is mentioned it is not material or traverſable. *R. Sal.* 561.

So, it is ſufficient, tho' it be imperfectly alledged: As, in Trover, if the Plaintiff ſays that he was poſſeſſed 9 *Maij* of Goods and loſt them, and the Defendant found them, and *Poſtea ſcil't* 1 *Maij* converted them, it is good, tho' the Converſion is alledged to be before the Loſs; for *Poſtea* is ſufficient, and the Day ſhall be rejected, being after the *ſcil't* and repugnant. *R.* 2 *Cro.* 428.

[So in Covenant, if Plaintiff declares on Articles, dated 30th *September*, 5 *G.* (which is 1718) and then ſays, *poſtea*, *ſcil.* 1ſt *May* 1718; this *ſcil.* ſhall be rejected, as inconſiſtent, and then it will ſtand that he covenanted the 30th *September*, and *Poſtea* committed the Breach. *Hayman* v. *Rogers*, *M.* 6 *G. Str.* 232]

[If Plaintiff declares againſt the Parſon, that he left his Tithes on his Field, *per quod* he loſt the Uſe of that Part under the Cocks, from 20th *Auguſt*, the Time of cutting, to 20th *December*, it is well enough, tho' the Parſon was not obliged to carry them away on the 20th *Auguſt*; for the Jury may apportion the Time, or the Plaintiff releaſe it. *South* v. *Jones*, *M.* 6 *G. Str.* 245.]

[Where Time is laid under a *ſcilicet*, it does not vitiate; as if in Debt on Bond, Defendant pleads Payment before the Day. *Cowne* v. *Barry*, *M.* 7 *G.* 2. *Str.* 954.]

[Or in Treſpaſs in *Michaelmas* Term, for an Aſſault 18th *October*, and Impriſonment for 25 Weeks, which is long after Action depending. *Webb.* v. *Turner*, *T.* 11 *G.* 2. *Str.* 1095. *Andr.* 250.

Debt on Bond for not performing Award; Plea that Arbitrators did not make Award on or before 21ſt *May*. Replication, that Arbitrators, after making Bond, and before exhibiting Plaintiff's Bill, *to wit*, on 21ſt *May*, did make Award; this is a ſufficient Allegation. *R. on ſpecial Demurrer. Biſſex* v. *Biſſex*, *T.* 5 *G.* 3. 3 *B. M.* 1729.]

So, in Ejectment, if the Plaintiff declares on a Leaſe 3 *Maij*, *Virtute cujus* he entred and was poſſeſſed, till the Defendant *poſtea ſcil't* 1 *Maij.* ejected him, the Day after the *ſcil't* is repugnant and ſhall be rejected; for it is ſufficient that he entred *Virtute Dimiſſionis et Poſtea* was ejected. *R.* 2 *Cro.* 96. *But this Judgment was diſapproved by the Ch. J.* 1 *Sid.* 8. *R. acc.* 2 *Cro.* 136. 662. 154. *R.* 2 *Bul.* 29.

So, if there was a Blank for the Day. *R.* 2 *Cro.* 312.

So, if a Man pleads that before the Obligation *ſcil't* 1 *Oct.* and the Day mentioned is after the Obligation, it ſhall be rejected as repugnant, after a Demurrer, as well as after Verdict. *R.* 1 *Lev.* 194.

But if by the Rejection of a Day impoſſible or repugnant, no Time appears when the Fact was done, it is bad: As *In Aſſumpſit*, if the Plaintiff declares on an *Indeb. Aſſumſit* and then adds another Count, which begins *Cumq; etiam Deft. poſtea ſcil't* 1 *Maij.* (which Day is before the Time alledged in the firſt Count) this is bad; for, if the Day after the *ſcil't* is rejected, no Time appears for the Promiſe in the 2d Count. *R. after Verdict Yel.* 94.

So, if the Jury find a Leaſe made 1 *Maij habend' a Die dat'*, *Virtute cujus* Plaintiff *eodem* 1 *Maij* was poſſeſſed *quouſq;* Defendant *Poſtea*, (*viz.*) *eodem* 1 *Maij* ejected him, it is bad; for if the Day after the *Poſtea* is rejected, no Time appears when the Ejectment could be, for *poſtea* does not import, that the Ejectment was after the Leaſe commenced, which did not commence 'till the 2 *May*. *R. after Verdict* 1 *Sid.* 8.

So by the *St.* 16 & 17 *Car.* 2. 8. After Verdict Judgment ſhall not be ſtayed, or reverſed, for a Miſtake of the Day, Month, or Year in any Declaration, *&c.* where the right Day, Month, or Year in the ſame, or any preceding Writ, Plaint, Roll or Record is once truly alledged. *Vide Amendment*, (K. 1, 2.)

So, if the Day alledged be impoſſible, or after the Trial, it ſhall be aided after Verdict. *R.* 8 *W.* 3. *Int' Wall* and *Duke*, (*Vide Ca. B. R.* 105.) *R. M.* 8 *W.* 3. *B. R. int. Blackall and Heall*, (*Vide Comyns's Reports* 12. *Carth.* 389. 5 *Mod.* 286. *Ca. B. R.* 102.) *Vide Poſt*, (3 M. 5.)

But, before, the Omiſſion of Time to a material Fact was not aided by a Verdict. *R. ut dicitur Cro. El.* 97, 98. *Per* 2 *J. but* 3 *cont. Cro. El.* 377.

So in a Declaration a certain Place ought to be alledged, where every Fact material and traverſable was done. *Vide Kit.* 226. (C. 20.) Certainty of Place.

In what County an Action ſhall be alledged, *Vide Action*, (N. 1, 2, 3.) *Vide Ante*, (C. 19)

As, in Trover, a Place of Converſion ought to be alledged. *R. Cro. El.* 78, 97.

[So in Ejectment, the Place is material. *Boddy* v. *Smith*, *T.* 10 *G. Str.* 595.]

So in Treſpaſs for taking of Corn, if the Defendant juſtifies for the Toll of Grain brought to Market to be ſold and ſold, the Place of Sale ought to be alledged, and it ſhall not be intended ſold in the Market, unleſs it be ſo ſaid. *R. Lut.* 1501.

In Debt on a Bond, the Plaintiff ought to count where the Bond was made, tho' it be without a Date.

[In Debt, the Deſcription of the Place is not material, in Treſpaſs it is. *Oats* v. *Machin*, *T.* 10 *G. Str.* 595.]

So in an Action on the Caſe, That the Defendant holds Land in *A. Ratione cujus* he ought *mundare Foſſas*, he muſt ſhew in what Place the Ditches are. *Kit.* 226.

So if, in Debt on an Obligation againſt an Heir, the Defendant pleads *Riens per Diſcent*, and the Plaintiff replies *Aſſets*, if he does not alledge a Place where the Aſſets are, it is Error. *R.* 2 *Cro.* 503.

So in an Action on the Caſe for abuſing a Horſe in a Journey, which was hired of *S.* at *P.* he ought to alledge the Place, where he was abuſed. *Semb. Ray.* 187.

So, in Covenant, if the Plaintiff alledges a Breach by Sentence in the Spiritual Court, he ought to alledge the Place, where the Spiritual Court was held, and if the Place of the Spiritual Court, when the Proceedings commenced, be mentioned, it is not ſufficient; for it ſhall not be intended to have Continuance in the ſame Place, if it is not alledged. *R. Lut.* 305.

So, in an Action on *Aſſumpſit*, a Place of the Performance of the Fact, averred to have been done as the Conſideration of the Promiſe, ought to be alledged. *R. Sho.* 50. *Sal.* 22.

As, if the Conſideration be, that he conſents to, and does not hinder a Marriage; he ought to alledge a Place of Conſent. *R.* 2 *Lev.* 227.

So in a Plea, there ought to be alledged a Place for every Fact, which is triable and traverſable. *Lut.* 1466.

And therefore, if the Defendant pleads a Releaſe, he ought to alledge a Place where it was made. *R. Lut.* 1142, 1501. *R. Cro. El.* 66, 78, 98. *R. H.* 4. *An. in C. B. int' Barker and Palmer.* (*Vide Comyns's Reports* 141.)

So in a Replication; for if the Defendant pleads, that being an Attorney of *C. B.* he ought not to be ſued elſewhere, without his Conſent, if the Plaintiff replies that he did conſent, and does not alledge a Place for a *Venue*, it will be bad. *R. Sal.* 4.

And there ought to be a certain Place alledged, where the Fact was traverſable, tho' the Iſſue be on another Point. 2 *Leo.* 22. And if there be not, it is Error; for it prevents the Defendant's taking Iſſue on it. *Ibid.*

But no Place is neceſſary for a Thing which is only Inducement. *R. Pl. Com.* 190. *b.*

So, two Places for the ſame Fact is bad. *R. Dal.* 106.

The Place alledged ought to be the County and the Pariſh, Hamlet, or other known Place in the ſame County. (*Cro. El.* 260.)

It is ſufficient, if the County be in the Margin, and the Declaration only mentions the County aforeſaid. *Vide infra.*

But a Fact, alledged in a Hundred only, is bad. *Cro. El.* 260.

Or, in a Ward only; for it is in the Nature of a Hundred. *R. Cro. El.* 260.

Or, in a County only, without naming a Pariſh, Vill, Hamlet, or known Place in the ſame County. *R. after Verdict, Hob.* 89. *R.* 2 *Cro.* 150. *R.* 1 *Sid.* 178.

Or, the Manor of *S.* without ſaying in what County. *R.* 2 *Cro.* 27.

Or, at *Whitehall, Tower-hill, &c. Semb.* 1 *Vent.* 119.

So, if the County be in the Margin, and the Declaration alledges a Fact at *H. in the County aforeſaid*, it is ſufficient; for it ſhall be referred to the County in the Margin. 2 *Cro.* 96. *R.* 2 *Cro.* 618.

Tho' another County be mentioned, by Way of Recital, in the Declaration before. *R. Cro. El.* 436. *Cont. Cro. El.* 311. 101. *R. Acc. Cro. El.* 465.

[So *Norfolk* to wit, Declaration againſt *A.* of *M.* in the County of *Wilts*, for that at *Catton* in the County aforeſaid, is good for *Norfolk*. *Sutton* v. *Fenn, M.* 13 *G.* 3. 3 *Wilſ.* 339.]

So it is ſufficient, if the Declaration ſays, that the Houſe demiſed is ſituate *in & ſuper Acclivitat' de H. R. per* 3 *J.* 2 *Vent.* 272.

But in an inferior Court, if the Taking be alledged at *A.* it ſhall not be intended to be within the Juriſdiction, tho' the Court be in the Margin. *R.* 2 *Cro.* 96.

So, if an Addition be *of the Pariſh of A.* without ſaying in what County, it is not good, tho' the County be in the Margin. *R.* 2 *Cro.* 167.

If it be coupled with a Place alledged before, or after: As in Debt for Non-Payment of 100 Guineas purſuant to the Judgment of *A.* and that the aforeſaid 100 Guineas are of ſuch a Value, *viz. apud N.* tho' no Place is alledged where the Judgment of *A.* was given, it is good, being coupled with the Value of the Guineas. *R. Lut.* 487.

So in Treſpaſs, *quare Warren' fregit, et Cuniculos fugavit*, without ſaying, *ibidem*, is good.

So in an Indictment, *quod intravit et diſſeiſivit*, without ſaying, *ad tunc et ibidem. R.* 2 *Cro.* 41.

In Trover, *quod Navem diripuit, nec non Bona aſportavit et convertit. R. Shor* 180.

In Debt on a Bond to pay, if *A.* dies before the 1ſt of *May* without Iſſue then living; if it is alledged that *A.* died, having *B.* his Son *in plena Vita apud D.* it is ſufficient, tho' he does not ſay where he had Iſſue; for it ſhall be tried at *D.* where the Iſſue was living. *Per* 3 *J. Dy.* 15.

So, if the Plaintiff, in Debt for Non-Performance of a Contract in the Embroidery of a Gown, alledges a Retainer at ſuch a Place, and the Time of embroidering it, but does not alledge any Place, where the Embroidery was to be done, and it is traverſable, whether the Defendant embroidered or not, yet it is good; for it ſhall be intended at the ſame Place where the Retainer was. *R. Cro. El.* 880.

So, if the Plaintiff alledges, that he was ſeiſed of the Parſonage of *M.* in *M. aforeſaid*, and of the Parſonage-Houſe, and preſcribes for a Way from the ſaid Houſe to *A.* but does not ſay in what Place the Houſe is, yet it is good; for it ſhall be intended to be in *M. R. Cro. El.* 898.

In Treſpaſs the Plaintiff alledged, that the Defendant put Filth ſo near his Houſe in *L.* and permitted the Water in the Defendant's Yard to flow, *per quod* the Walls of the Plaintiff's Houſe were damaged, without ſaying where he put the Filth, or permitted the Water. *R. good. Hard.* 61.

In Debt on a Bond, the Defendant pleads a Pardon, the Plaintiff replies, that the Bond was to the Uſe of a Receiver, no *Venue*, where the Bond was made, is neceſſary in the Replication; for it is admitted by the Plea, that there was ſuch a Bond. *R. Hard.* 187.

In *Aſſumpſit* to convey Land, if the Defendant pleads Performance, it is not neceſſary to ſay in what Place he conveyed it; for it ſhall be intended on the Land. *R. Mar. pl.* 51.

If the Plaintiff alledges Seiſin in the Defendant of a Mill in *D.* and a Nuſance by raiſing the Mill-banks, without ſaying where the Banks were. *R.* 2 *Cro.* 555, 557.

If the Plaintiff alledges a Demiſe at *H.* and a Diſtreſs in Parcel demiſed, without ſaying where it was; for it ſhall be intended in *H.*

If he alledges an Aſſignment by the Sheriff of a Term for Years extended by him, without ſaying where; for it ſhall be intended where the Land lies. *R.* 2 *Mod.* 304.

If the Fact is, in it's Nature, local.

So, in a Plea to the Perſon of the Plaintiff, as *Miſnomer*, bad Addition, Alien, *&c.* a Place for the *Venue* is not neceſſary; for it ſhall be tried where the Action is brought. *R.* 1 *Sal.* 2. 6.

So, if Judgment be by Default, after a Writ of Inquiry, it is not material, tho' no Place be alledged, where the Promiſe was made; for the Inquiry ought to be of Nothing but Damages, and this may be by any Jurors of the County. *R. Lut.* 239.

So if the Fact, to which no *Venue* is alledged, be admitted by the Bar, it is good. *Vide Poſt*, (C. 85.)

Or the Iſſue does not require a *Venue* of that Place. *R. Noy* 9.

So by the *St.* 16 *&* 17 *Car.* 2. 8. After Verdict, the Things there mentioned, or any other of the like Nature, not being againſt the Right of the Suit, or whereby the Iſſue or Trial are altered, ſhall be amended.

But,

But, before, the Omiſſion of a Place, when it was material to be alledged, was not aided by Verdict. *R. Cro. El.* 78, 98. *Per* 2 *J. but* 3 *cont. Cro. El.* 377. *Adm. Cro. Car.* 525.

From what Place a Jury ſhall come, *Vide Amendment*, (H. 1, 2.)

(C. 21.) Certainty of the Thing demanded.

So, a Declaration ought to have Certainty of the Thing demanded: And therefore in Treſpaſs for taking his Fiſh, the Declaration is bad, if it does not ſhew the Number and the Kinds of Fiſh in certain. *R.* 5 *Co.* 35.

So, in Treſpaſs, *quare in ſeparal' Piſcar' ſua piſcat' fuit, et Piſces cepit*, without mentioning the Quantity or Species. *R.* 1 *Vent.* 272. *Dub.* 1 *Vent.* 329.

In Debt *pro* 40 *Quarteriis Frumenti*, without ſaying of what Species, the Declaration is bad. *Cro. El.* 837.

Or, *pro* 40 *Ulnis Pann'*, without ſaying of Wool, or what other Materials. *Ibid.*

In an Action upon the Caſe for diſturbing him in his Paſture, if the Plaintiff ſays, *quod ipſe cum quibuſdam aliis tenen' per Copiam, &c.* have the ſole Paſture, without ſaying with whom in particular. *R.* 2 *Lev.* 178.

So in Treſpaſs, *quare duas Acras Terræ fodit et aſportavit*, not ſhewing the Quantity of the Land taken away, is bad. *R. after Verdict*, 2 *Vent.* 174. *Vide Poſt*, (3 M. 5.)

So, if it be, *quare diverſas Pecias Maheremii aſportavit*, it is bad for Uncertainty. *R.* 2 *Vent.* 262.

Quare Ciſtas cepit, & Veſtimenta in Ciſtâ prædict', without ſaying in which of them. *Al.* 9.

Quare Clauſum fregit et diverſa Onera Equina Terræ aſportavit, per quod Viam amiſit. *R.* 2 *Vent.* 73.

Quare cepit quandam Parcellam Lanæ. *R.* 2 *Lev.* 195.

[*Aſſumpſit pro diverſis rebus* is ill. *Semb. Spark* v. *Jobber*, *M.* 13 *G. Ld. Raym.* 1450.]

[Treſpaſs for taking away *diverſa Bona et Catalla*, Judgment arreſted for Uncertainty. *Wyatt* v. *Eſſington*, *M.* 12 *G. Fort.* 377. *Str.* 637. 2 *Ld. Raym.* 1410.]

So, in an Action againſt the Hundred, the Declaration is bad, if it does not ſhew the Goods ſtolen in particular. *Adm.* 2 *Sand.* 379.

So, in Debt for an Amercement, the Declaration ought to ſhew the certain Sum, at which the Defendant was amerced, and it is not ſufficient to ſay, to what Sum it was affeered. *R.* 3 *Lev.* 206.

And Want of Certainty in the Declaration is not aided by Verdict. *R.* 5 *Co.* 35. *b. R. Cro. El.* 817.

Nor ſhall be aided by the *St.* 16 & 17 *Car.* 2. 8. which ſays, That Judgment ſhall not be arreſted for any other Matter that doth not alter the Nature of the Action or Trial. *R.* 1 *Vent.* 272.

[In Debt for Freight on a Charter-party; if the Breach aſſigned is, that Defendant has not paid for Freight 200 *l.* with Average according to Charter-party, it is good, tho' it does not ſay to what the Average amounts. *Dodd* v. *Atkinſon*, *M.* 10 *G.* 2. *B. R. H.* 342.]

[*Aſſumpſit* for a Bond of the Lord Viſcount *Gave*, whereas it was *Gage*, and ſo called throughout afterwards *Gave*; only Surpluſage. *Alcorn* v. *Weſtbrook*, *M.* 19 *G.* 2. *Wilſ.* 115.]

[Treſpaſs for taking *divers Quantities of China-ware*, ſufficient. *Barnes* 276.]

(C. 22.) Certainty in other Circumſtances.

It ought to ſhew plainly and certainly all Circumſtances material for the Maintenance of the Action; for if there are two Intendments, it ſhall be taken moſt ſtrongly againſt the Plaintiff. *Pl. Com.* 202. *b.*

As in Debt upon a Contract to pay 20*s.* upon Waſte done, and Plaintiff ſhews that Defendant committed Waſte; it is not ſufficient, without ſhewing how the Waſte was done.

In Reſcous on a Diſtreſs for Rent, he ought to ſhew on what Days the Rent was payable. *Kit.* 227. *a.*

In

In an Action upon the Caſe by a Parſon, who intitles himſelf by the Reſignation of *B.* for Dilapidations, he ought to ſhew how the Reſignation was made. *R. Lut.* 116.

In an Action upon the Caſe for overloading his Horſe, he ought to ſhew how or with what Weight he overloaded him. *R.* 2 *Leo.* 104.

In Prohibition upon a Diſcharge of Tithes by Unity at the Time of the Diſſolution, he ought to ſhew ſuch an Unity, by which he may be diſcharged. *R. Hob.* 296, *&c.*

[If a Cuſtom is alledged, that ſuch a one has a Right to his Freedom, paying a *reaſonable* Fine, and the Evidence is, that he ſhould pay 6 *s.* 8 *d.* it is well enough laid. *Moor* v. *Mayor of Haſtings*, *H.* 10 *G.* 2. *Str.* 1070. *B. R. H.* 353.]

(C. 23.) Declaration muſt be ſenſible.

So, if the Declaration be repugnant or inſenſible, it will be bad: As, in Treſpaſs for taking away Timber *jacen' erga Confectionem Domus nuper ædificat'*; for it cannot be for the Building of a Houſe which is already built. *R.* 1 *Sal.* 213, 458.

So, in Covenant, and a Breach aſſigned, *quod durante Tempore quo ſervivit* he departed from his Service. *R.* 1 *Sal.* 213.

So, in an Action upon the Statute of Uſury, that *A.* lent to *B.* and *pro dando* to *A.* ſuch a Day of Payment, He agreed. *R.* * 1 *Sal.* 325. *Vide Poſt*, (C. 25.)

* *Semb. cont.*

So, if the Declaration has a Blank for a Day or Place, or other material Thing, whereby it is inſenſible, it will be bad. *R.* 2 *Cro.* 498.

(C. 24.) But Certainty to a general Intent is ſufficient. What Certainty is required in a Bar. *Vide Poſt*, (E. 5, 6, &c.)

But in a Count a certain Intent in general is ſufficient. *Co. Lit.* 303. *Vide Action upon the Caſe upon Aſſumpſit*, (A. 3, 4)

As in *Aſſumpſit* to pay ſo much *if he marries the Daughter of the Defendant at his Requeſt*, if he ſays that he did marry her, without ſaying, *at the Defendant's Requeſt*, it is good; for it ſhall be intended. *R. Cro. Car.* 194, 5.

In Account as Receiver, till the Feaſt of *S. Mich.* without ſaying what *S. Mich.* viz. *S. Mich. in Tumbâ*, or *S. Mich. Arch.* yet it is good; for it ſhall be intended *S. Mich. Arch.* which is the moſt known and notorious.

In Debt on an Indenture, which contains an Agreement for a Marriage between him and *A. if the Eccleſiaſtical Law permits*, if he counts of a Requeſt to marry, and that *A.* refuſed, it is ſufficient, without ſaying he requeſted to marry at a Canonical Time.

In an Action on a Statute, which gives to all Subjects, *&c.* if the Plaintiff alledges, that he is *modo Subditus*, it ſhall be intended that he was ſo at all Times. *R.* 1 *Lev.* 121.

In *Aſſumpſit* to ſatisfy for Goods, if he ſays, that ſo much is *minus ſatis* to ſatisfy him, it is ſufficient; for if the Plaintiff does not demand more, he muſt be content with ſo much. *R.* 2 *Cro.* 552.

[In Action for maliciouſly holding to Bail in an inferior Court, for thirty Shillings, it is not neceſſary to ſet forth for what Sum the Court can hold to Bail; for by 12 *G.* 2. no Court can hold to Bail for leſs than forty Shillings. *Smith* v. *Cattel*, *P.* 8 *G.* 3. 2 *Wilſ.* 376.]

(C. 25.) And the Words ſhall have a reaſonable Intendment.

And Words ſhall have a reaſonable Intendment and Conſtruction. *Vide Action upon the Caſe upon Aſſumpſit*, (A. 5.)

And therefore in Aſſize, if a Man complains that the King ſeized of ſuch a Park granted *Officium Parci ſui*, without ſaying (*prædict'*) yet it is good; for it ſhall be intended the Park before mentioned, *prædict'* being mentioned before and after. 8 *Co.* 57.

If the Plaintiff alledges a Demiſe to *A. Virtute cujus* he entred, it ſhall be intended that he entred immediately. *R. Lut.* 108.

If a *Cap. Utlagat'* or other judicial Writ be pleaded, as iſſued ſuch a Day, and it is not ſaid to have iſſued in Term-time, it is good; for it ſhall be intended, when no Cauſe to the contrary appears. *R. Lut.* 333.

If it be pleaded, That *A.* was ſeiſed, that *he* died ſeiſed, without ſaying *who*, it ſhall be intended that *A.* died ſeiſed, it being ſaid before that he was ſeiſed. *R. Lut.* 1172.

If an uſurious Agreement be alledged between *A.* and *B.* and that *A.* the Lender *pro dando Diem Solution'* to *A. haberet* ſo much, it ſhall be intended, that it was *pro dando B. Diem Solutionis A.* 1 *Sal.* 325.

If the Declaration ſays *Quod Def' proſecut' fuit et adhuc proſequit'* Suit, it ſhall be intended, at the Time when the Action was commenced. *R.* 3 *Mod.* 103. 4 *Mod.* 152.

[In Caſe on promiſſory Note, ſet out to be made 2d *November*, to pay on the 31ſt *December next*: *next* ſhall be intended next after the Date of the Note, not next after the Action brought. *Carbonel* v. *Davis*, *M.* 7 *G. Str.* 394.]

If a Declaration in Waſte be *Quod A. feoffavit B.* to the Uſe of *C.* and his Heirs, it is ſufficient, without ſaying *quod feoffavit B. and his Heirs*. *R. Mo.* 871.

So, if an Action be ſeveral in it's Nature, ſuch preciſe Certainty is not neceſſary: As in an Action on the *St.* 2 & 3 *Ed.* 6. as Rector of the Churches of *D.* and *S.* for not ſetting out his Tithes on 400 Acres of Land in *D.* and *S.* it is ſufficient, without ſaying how much Land in *D.* and how much in *S.* for it is in the Nature of Treſpaſs. *R.* 2 *Lev.* 1.

(C. 26.) And general Words are ſufficient where the Certainty lies within the Defendant's Notice.

And general Words are ſufficient where the Certainty lies within the Defendant's Notice.

So, if the Words aſcertain the Lands which are in Demand, it is ſufficient to plead a Conveyance of them *inter al.'* *Lut.* 1007.

(C. 27.) Where they are aſcertained by other Circumſtances.

So general Words are ſufficient, where they are aſcertained by other Circumſtances: As in Treſpaſs, *quare Ciſtam fregit et diverſa Veſtimenta in Ciſta prædict' exiſten' cepit* is good, without ſaying what Veſtments. *R. Al.* 9.

Quare Domum fregit et ſeparales Claves pro aperiend' Oſtia Domus prædict' cepit. *R. Sal.* 643.

Quare Clauſum fregit et Spinas ſuas ad Valent' ſo much *ſuccidit*. *R.* 2 *Cro.* 435.

So Debt for twenty *Par' Caligar'* without ſaying of *Wool*, *Silk*, *&c.* is ſufficient; for when a Thing is converted to another Species, a Declaration by the Name of that Species is good. *R. Cro. El.* 837.

Or for ſo many *Par' Calceorum*. *Ibid.*

Or ſo many Loaves *Panis*, without ſaying of what Grain. *Cro. El.* 837.

If a Man preſcribes to incloſe Lands lying together in a Common Field, if he ſays that he incloſed, this imports that they did lye together. *R.* 2 *Mod*, 104.

(C. 28.) And Surpluſage does not hurt. *Vid Poſt*, (E. 12.)

And Surpluſage ſhall not hurt: And therefore, if a Man in a Declaration makes an imperfect Mention of a Thing, which need not be mentioned, it is not prejudicial: As in a *Warrantia Chartæ* if the Plaintiff ſays, that he requeſted the Defendant to warrant the Land to him, or give him a Plea in Bar, when the Vouchee might plead in Abatement as well as in Bar, yet it is ſufficient; for the Requeſt to warrant was ſufficient, and the Requeſt to give a Plea was Surpluſage, and need not have been mentioned. *Hob.* 28.

If he mentions a Condition ſubſequent, and does not alledge a certain Performance, it ſhall not hurt; for the Whole was Surpluſage. *Pl. Com.* 30. *a.* 32. *b.*

If a Treſpaſs *Temp. Eliz.* be alledged to be *contra Pacem nup. Reginæ et Regis nunc*, it is not bad, for *Regis nunc* ſhall be Surpluſage. *R.* 2 *Cro.* 377. 3 *Bul.* 82.

[If by Statute, the Action is given to the Informer only, and the Declaration ſays the Action accrued to the King, the Poor of the Pariſh, and the Informer, it is only Surpluſage. *French* v. *Wiltſhire*, *M.* 11 *G.* 2. *Andr.* 67.]

If

If the Plaintiff declares *Quod cum ipſi idem Def. &c.* for *ipſi* is Surpluſage. 2 *Mod. Ca.* 377.

So, if by the Omiſſion of any Words, tho' not repugnant to the precedent Words, that which was inſenſible may be made ſenſible, they ſhall be rejected as Surpluſage. *Dub.* 1 *Sal.* 325.

So, if by the Words after a *viz.* or *ſcilicet* a Thing be alledged, impoſſible, or repugnant to the Plaintiff's Title, the Words ſhall be rejected as Surpluſage: As in Ejectment, if the Entry or *Ouſter* be alledged *poſtea, viz.* ſuch a Day, which is a Day before the Demiſe. (*Vide Sal.* 325.)

So in Treſpaſs.

So in Debt for Rent, if a Deviſe of the Reverſion to the Plaintiff be alledged, and that *poſtea, viz.* ſuch a Day, the Deviſor died, which was a Day before the Leaſe. *R. Hard.* 4.

(C. 29.) Except where it defeats the Action.

Yet, if a Man by the Allegation of a Thing not neceſſary ſhews that he had no Cauſe of Action, this, tho' Surpluſage, ſhall hurt: As, in Aſſize, if the Plaintiff makes a Title, which he need not, and the Title is not good, the Whole ſhall abate. *Pl. Com.* 84. *b.* 202. *b.*

So, if a Man miſrecites a Statute in a material Place, when it need not have been recited, it is fatal. *Pl. Com.* 84. *b.* *Vide Action upon Stat.* (I.)

So, in an Action againſt a Diſturber, where Poſſeſſion is a ſufficient Title for the Plaintiff, yet if the Plaintiff ſhews a Title, and this appears inſufficient, the Declaration is bad. *R. after Verdict. M.* 9 *W.* 3. *inter Dorne and Caſhford,* 1 *Sal.* 363, 365. (*Vide* 1 *Ld. Ray.* 266. *Comyns's Reports* 44.)

So, in Debt for a Sum awarded, if the Plaintiff ſhews a bad Award. *Vide Arbitrament* (I. 2.)

So, in Partition, if the Plaintiff ſhews that he and the Defendant hold both in Fee, where the Defendant was ſeized in Tail, if this be ſhewn by Verdict, the Writ ſhall abate, tho' it was not neceſſary to ſhew the Defendant's Title. *R. Cro. El.* 760.

(C. 30.) So leſs Certainty is wanting for a collateral Matter.

So preciſe Certainty is not neceſſary for a Thing collateral to the Action: As, in an Action upon the Caſe for putting in his Cloſe Carrion which died of the *Murrain, per quod diverſa Averia* died, it is ſufficient, without ſaying what or how many Beaſts, for the Action is not for the Beaſts or the Value of them. *R. Al.* 22.

If the Plaintiff alledges *Quod quædam Pars Domûs fuit in Decaſu,* and in Conſideration that the Plaintiff would repair, the Defendant *aſſumpſit, &c.* he need not ſay what Part of the Houſe was decayed. *R.* 2 *Leo.* 53.

[In Treſpaſs for breaking and entring Plaintiff's Houſe, wrenching open Cloſet-doors, Cheſts, *&c.* and toſſing Goods about, it is not neceſſary to ſpecify the Cloſets, Cheſts, Goods, *&c.* *Chamberlain* v. *Greenfield, P.* 12 *G.* 3. 3 *Wilſ.* 292.]

(C. 31.) And little Certainty is wanting for Inducement. *Vide Poſt,* (C. 43 E. 10, 18.)

So exact Certainty is not neceſſary when a Thing is alledged only as an Inducement: As, if a Man claims a Thing appurtenant to an Office, and not the Office itſelf, it is ſufficient to ſay that it is *antiquum Officium,* and it is not neceſſary to preſcribe for it. *R.* 10 *Co.* 59. *b.*

So, if he claims a Thing by Cuſtom in ſuch a Vill, it is ſufficient to ſay *Quod eſt antiqua Villa.* 10 *Co.* 59. *b.*

If an *Aſſumpſit* be brought on a Promiſe to give ſo much with his Daughter, as he agreed to give with *A.* it is ſufficient to ſay he agreed to give ſo much with *A.* without ſhewing how or with whom he agreed. *Dub. Yel.* 17.

So, in an Action on the Caſe againſt a Bailiff for not taking ſufficient Pledges, it is ſufficient to ſay, that he gave him the uſual Fees without ſaying how much he gave; for the Demand is not for the Fees. *Lat.* 159.

In an Action on the Caſe for diverting a Watercourſe, if he alledges Seiſin for Life, it is ſufficient, without ſaying for his Life or the Life of another. *R. Cro. El.* 112, 3.

In an Action for ſlandering his Title, if he ſays, that he was ſeized, *&c.* it is ſufficient, without ſaying of what Eſtate.

In

In an Action on the Caſe, if he recites a Recovery in an Inferior Court, it is ſufficient, without ſhewing by what Authority. *R. Cro. El.* 218.

In an Action for Diſturbance of Common, it is good, tho' the preciſe Common be not alledged. *R.* 2 *Cro.* 630.

Or for throwing down his Hurdles, it is ſufficient to preſcribe for erecting *in aperta Platea* and taking *diverſas Denar' Summas*, without deſcribing the Place, or aſcertaining the Money more exactly. *R.* 1 *Leo.* 108.

Action on the Caſe by a Leſſee for diſturbing him in his Toll, there is no Need to ſay what Eſtate the Leſſor had when he demiſed. *R. Ow.* 109.

In a *Formedon* in *Reverter*, or *Remainder*, there is no Need to ſhew the Death of the particular Tenant. *R. Pl. Com.* 32. *b.*

In Debt on a Recognizance removed by Error out of *C. B.* into *B. R.* there is no Need to mention its being reverſed or affirmed. *R.* 2 *Cro.* 98.

(C. 32.) So, if it be certain in Part and uncertain for other Part Judgment ſhall be for the Plaintiff, as to the certain Part. *Vide Poſt*, (E. 36 F. 25.) *What Plea or Replication bad in Part is bad in the whole.*

So, if a Declaration, in which Damages are demanded, be certain for Part, and uncertain for the Reſidue; if there be a Demurrer to the whole Declaration, the Plaintiff ſhall have Judgment for that Part which is good, and ſhall releaſe his Damages for the other Part: As, in an Action on the *Statute of Winton* againſt a Hundred on a Robbery of his Money, and of Goods in his Cuſtody, and does not ſay what, if the Defendant demurs to the Whole, the Plaintiff ſhall have Judgment for the Money, but not for the Goods. *R.* 2 *Sand.* 379. *Vide Poſt*, (Q. 3.—2 V. 3.)

So, in Debt on the Statute of Uſury on a corrupt Agreement for 40 *l.* and on another for 20 *l.* but does not ſay that this was corrupt, if the Defendant demurs to the Whole, the Plaintiff ſhall have Judgment for the 40 *l.* *R.* 2 *Cro.* 104. 1 *Sand.* 286.

So, if the Defendant pleads to the Whole. *R.* 2 *Cro.* 104.

So, in Debt againſt an Executor on a Bond and on ſimple Contract, it is good for the Bond. 2 *Cro.* 104, 5.

So, in Covenant againſt *A.* on a Covenant in Law on a Demiſe by him and *B.* if the Plaintiff aſſigns ſeveral Breaches, one that *D.* was ſeized, upon which the Action ought to be againſt *A.* and *B.* the other that *A.* entred upon him, it ſhall be good for the laſt. *R.* 1 *Sal.* 137. *Acc.* 2 *Sand.* 380. *Vide Poſt* (2 V. 3.)

In Replevin, if the Defendant avows for ſo much Rent, Part of which is not due, it ſhall be good for the Reſidue. 1 *Sand.* 286. 11 *Co.* 45. *b.* *R. Mo.* 281. *Vide Poſt* (3 K. 14.)

(C. 33.) Declaration muſt not be double *Vide Poſt*, Duplicity in Bar, (E. 2.)

So a Declaration ought to be ſingle, for Duplicity vitiates it. *Hob.* 295.

When ſeveral Matters may be contained in the ſame Declaration or not. *Vide Abatement*, (G. 4.) *Action*, (G.)

As in a *Quare Impedit* if the Plaintiff alledges ſeveral Preſentments in his Anceſtors, it is double.

Or a Preſentment by a Feoffor, and another alſo by the Feoffee.

So, in Debt on a Bond to pay ſeveral Sums at ſeveral Days, if the Plaintiff declares that the Defendant did not pay the ſaid ſeveral Sums nor any of them, it is double; for Nonpayment of any Sum is a Forfeiture of the Bond. *Semb.* 2 *Vent.* 198. 1 *Rol.* 112.

But, if a Declaration be with an expreſs *Aſſumpſit* and a *Quant' meruit* for the ſame Goods, *&c.* without ſaying *alia*, it ſhall be good. *R. after Verdict.* 1 *Sal.* 213.

So a Declaration in Covenant may aſſign ſeveral Breaches.

And Duplicity in a Declaration is aided by the Defendant's Plea. *R.* 2 *Vent.* 222.

So it is aided upon a general Demurrer. *Ibid.*

[If two Counts in a Declaration are ſo much the ſame, that no Evidence could be produced to prove one, which would not prove the other, the Court will oblige Plaintiff to ſtrike out one; but not if Defendant has obtained Time to plead. *Wilkins* v. *Perry*, *T.* 8 *G.* 2. *B. R. H.* 129.]

(C. 34.) Declaration ought to ſhew a Title.

The Plaintiff or Demandant in his Count or Declaration ought to intitle himſelf to the Action; for he is to recover by the Validity of his own Title, and not by the Weakneſs of the Defendant's. *Vau.* 8, 58.

As, in a Writ of Partition between Parceners, the Plaintiff ought to ſhew, that it was the Inheritance of their Anceſtors and deſcended to them. *D. Cro. El.* 64.

So in Partition between Joint-tenants. *Ibid.*

Otherwiſe between Tenants in Common; for they come in by ſeveral Titles, and the Title of one does not lie in the other's Knowledge. *R. Cro. El.* 65.

So, in a *Quem Redditum reddit*, the Plaintiff muſt ſhew a Title, for which he demands Attornment. *Cro. El.* 64.

In Waſte he ought to ſhew a Title to the Reverſion *ex Aſſignatione*, or that he demiſed to the Defendant, *&c.* *Ibid.*

In a *Formedon in Deſcender*, he ought to ſhew the diſtinct Gift, by which he claims. *Jon.* 453.

In Remainder, he ought to ſhew all the prior Remainders (tho' expired) upon which his Remainder depends. 8 *Co.* 88. *a.*

In a Writ of Eſcheat, or *Ceſſavit*, he ought to ſhew the Tenure. 8 *Co.* 86. *b.*

So, in a Writ of Ward, or of *Meſne*. *Ibid.*

[Plaintiff claims an Eaſement; if it appears in the Declaration that it is out of Defendant's Soil, Declaration muſt ſet out the Title. *Vernon* v. *Goodrich*, *Str.* 5.]

(C. 35.) And how ſeiſed, *&c.*

If a Man alledges in himſelf a Title to the Inheritance or Freehold of Lands in Poſſeſſion, he ought regularly to ſay, *quod fuit ſeiſitus*. *Co. L.* 17. *a.* *Vide Poſt*, (C. 43. E. 22.)

If he alledges Poſſeſſion of a Term for Years, or other Chattel Real, he ſhall ſay, *quod poſſeſſionatus fuit*. *Ibid.*

So, if he alledges Seiſin of Things manurable, as of Lands, Tenements, Rents, *&c.* he ſhall ſay, *quod fuit ſeiſitus in Dominico ſuo ut de Feodo*. *Lit. S.* 10.

If of Things not manurable, as of an Advowſon, *&c.* he ſhall ſay, *ſeiſitus ut de Feodo et Jure*, omitting *in Dominico ſuo*. *Ibid.*

So, if he alledges Seiſin of a Reverſion after an Eſtate for Life. *Pl. Com.* 191. *a.*

So, if the Reverſion be after a Term for Years, he may ſay, *ſeiſitus ut de Feodo et Jure*, for he has not the Occupation, tho' he may alſo ſay, *in Dominico ſuo ut de Feodo*; for he has the Poſſeſſion of the Freehold, and may have an Aſſiſe. *R. Pl. Com.* 191. *a.*

If he be ſeiſed in Fee, he ſhall ſay, *in Dominico ſuo ut de Feodo*; if in Tail, *ut de Feodo talliato.*

If for Life, *Seiſitus pro Termino Vitæ ſuæ.* *Co. L.* 42. *a.*

If to Huſband and Wife for Life and to the Heirs of the Wife, he ſhall ſay, *Virtute cujus ſunt ſeiſiti ſibi et Hæredibus Uxoris, in Jure Uxoris.* 27 *H.* 8. 21. *b.*

But ſometimes *ſeiſitus* is uſed for *poſſeſſionatus*, and *è contra*. *Co. L.* 17. *a.*

Yet, *intereſſat'* of a Term will be bad. *R. Sho.* 106.

(C. 36.) Muſt ſhew a ſufficient Eſtate in him from whom he derives Title.

So, if the Plaintiff derives an Eſtate from *A.* he ought to ſhew that *A.* had ſuch an Eſtate as enabled him to make the Eſtate to the Plaintiff: As, if a Man intitles himſelf to a Rent by a Grant from *B.* he muſt ſhew what Eſtate *B.* had, whereby it may appear that he could grant ſuch Rent. *Mar. pl.* 2.

So, if the Defendant avows for Rent on a Leaſe for Years and ſays, That the Dean and Chapter of *W.* ſeiſed *in Jure Collegii*, made the Leaſe, it is bad without ſaying of what Eſtate they are ſeiſed. *R. Lat.* 121. 14.

In Debt for Rent by an Executor on a Leaſe for Years by his Teſtator, if he ſays, That the Teſtator was poſſeſſed for Years, and demiſed it to the Defendant for a leſs Term, he ought to ſhew the Commencement of the Teſtator's Term, and that his Leſſor was ſeiſed of ſuch an Eſtate, that he could make ſuch Leaſe. *R.* 1 *Brownl.* 48. *Cont. Sal.* 562.

In Ejectment, the Plaintiff ought to ſhew a Title in the Leſſor, and a Demiſe to him. *Dy.* 366. *a.*

So, if he avows for Rent in Replevin on a Demiſe by him, or his Teſtator, to the Defendant for Years, he ought to ſhew ſuch an Eſtate in the Leſſor, that he could make ſuch Demiſe. *R. Sal.* 562. *

* But now by the *St.* 11 *G.* 2. 19. *Sect.* 22. may avow generally.

(C. 37.) Muſt plead a Conveyance as it operates.

So, if the Plaintiff conveys to himſelf an Eſtate by Deed, he ought to plead the Conveyance as it operates in Law, and not according to the Words of the Deed. 1 *Vent.* 109.

And therefore, if by the Deed the Words are, *I give, grant, releaſe and confirm*, he muſt not ſay, that ſuch a one *dedit, conceſſit, relaxavit et confirmavit*, but he ought to ſay, *quod conceſſit*, or *quod relaxavit*, &c. as the Deed operates. 3 *Lev.* 292. *R.* 1 *Vent.* 78. *Ray.* 187. 1 *Sid.* 452. 2 *Sand.* 96.

So, if a Deed operates as a Covenant to ſtand ſeiſed, he cannot ſay, That for Affection *conceſſit, &c.* *R.* 3 *Lev.* 292. 4 *Mod.* 150. *Skin.* 315.

And tho' he adds, *quæ quidem Conceſſio operavit per Viam Conventionis ſtare ſeiſit', &c.* it is not good, for this is Impertinent. *R.* 3 *Lev.* 292.

So, tho' he concludes *Virtute cujus*, and of the Statute of Uſes he was ſeiſed. *Cont. per* 3 *J. but Pollexfen acc. and the Judgment by the* 3 *J. was reverſed in B. R.* 3 *Lev.* 292. 2 *Vent.* 149. 4 *Mod.* 149.

If there be a Feoffment by a Joint-tenant to his Companion, it ought to be pleaded as a Releaſe, not as a Feoffment or Grant. 4 *Mod.* 150.

If Tenant for Life grants to him in Reverſion, it ought to be pleaded as a Surrender. 4 *Mod.* 151.

But if a Verdict finds, that *A. conceſſit, &c.* it ſhall be conſtrued according to the Import of the Deed. 4 *Mod.* 151.

How a Bargain and Sale ſhall be pleaded, *Vide Bargain and Sale*, (B. 12.) How a Deviſe, *Vide Deviſe*, (P.)—How a Common Recovery, *Vide Poſt*, (3 A. 8.)

(C. 38.) If he claims by Cuſtom or Preſcription, muſt preſcribe, &c.

So, if the Action be founded on a Cuſtom or Preſcription, the Plaintiff in his Declaration ought to ſhew a good Cuſtom or Preſcription: As, in an Action upon the Caſe for not keeping a common Bull or Boar within the Pariſh, he ought to ſhew a Cuſtom or Preſcription to keep it. *R.* 4 *Mod.* 241. *Vide Preſcription*, (H.)

Or, at leaſt, that the Defendant, being Rector of the Pariſh, ought to keep, in Conſideration of his Tithes. 4 *Mod.* 241.

If the Plaintiff makes Title to an Office, he ought to preſcribe for it. *R.* 10 *Co.* 59. *b.*

So, in an Action upon the Caſe for not repairing Fences, he ought to ſhew a good Preſcription to repair; for it is a Charge to do a Thing againſt common Right. *R.* 1 *Sal.* 335, 6.

In an Action upon the Caſe for incloſing his Common. 1 *Sal.* 365. *Mod. Ca.* 19.

But where the Plaintiff does not claim the Office itſelf, &c. by Preſcription, but a Thing incident or appurtenant to it, it is ſufficient to ſay, *quod eſt antiquum Officium.* *R.* 10 *Co.* 59. *b.*

So,

So, if he ſhews that which is *tantamount*, it is ſufficient, tho' he does not ſay *antiquum*: As, if he ſays, *quod divertit Aquæ Curſum ab antiquo Curſu ad Molendinum*, tho' he does not ſay, *quod eſt antiquum Molendinum*. *R.* 3 *Lev.* 133. 3 *Mod.* 50. *Vide Preſcription*, (H.)

So, if the Plaintiff alledges that he was ſeiſed, and then preſcribes, it is not good, if he does not alledge that he was ſeiſed in Fee; for otherwiſe he cannot preſcribe. *R.* 2 *Mod*, 318.

So it ſhall not be intended a Seiſin in Fee, after Verdict. *Ibid.*

(C. 39.) When Poſſeſſion is ſufficient.

But againſt a Wrong-doer, it is ſufficient to ſay generally, that the Plaintiff *habere debet* the Thing demanded, without making Title by Grant or Preſcription; for Poſſeſſion is a ſufficient Title againſt him: As, in an Action for diſturbing him in his Toll. *R. in B. R. and aff. in Exch.* 2 *Vent.* 292. *R.* 2 *Cro.* 43, 123. *R. Ow.* 109.

So, in an Action for digging in his Common, it is not neceſſary to ſhew a Title to the Common. *R. on Demurrer in C. B. and aff. in B. R. Trin.* 8 *W.* 3. *int. Stroud and Birt*, (*Vide Comyns's Reports* 7.) 4 *Mod.* 423. *R.* 1 *Vent.* 319. *R. after Verdict.* 4 *Mod.* 175. *R. Skin.* 213, 621.

So, in an Action for ſtopping his Way, it is not neceſſary to ſhew a Title to the Way. *R. and aff. in Error.* 1 *Vent.* 275. *St. John and Moody. And on Demurrer int' Blockley and Slater, H.* 4 & 5 *W.* & *M. Rot.* 1771. *R.* 3 *Lev.* 266. *Lutw.* 120. 2 *Lev.* 148.

Tho' the Way appears to be in the Defendant's Cloſe. *R. Lut.* 120.

Or, for diverting his Watercourſe, *quæ ad Terram* of the Plaintiff *currere conſuevit*, it is not neceſſary to ſhew any other Title. *R. Cro. Car.* 500, 575. *R.* 3 *Lev.* 133. 3 *Mod.* 49. *Dub. Sho.* 64. *R. Carth.* 85.

So, if he ſays, *quæ currere debuit et debet*. *R. Skin.* 316.

So, in Debt upon the *St.* 2 *Ed.* 6. 13. it is not neceſſary to ſhew a Title, but only that he is Rector or Farmer, *Vide Poſt*, (2 S. 16.)

So, in an Action for diſturbing him in his Seat in a Church, it is not neceſſary to alledge Repair, or any other Ground of Enjoyment of his Seat, but his Poſſeſſion; for this is ſufficient againſt a Wrong-doer. *R.* 3 *Lev.* 73.

[So if a Man is diſturbed by a Stranger in his Right of Sepulture in the Chancel, for which he ought to pay the Churchwarden 2 *s.* he need not ſet *that* out. *Waring* v. *Griffiths*, *H.* 31 *G.* 2. 1 *B. M.* 440.]

So, in Real Actions, founded on a *Tort*, there is no Occaſion to ſhew a Title. *Semb.* 8 *Co.* 87. *b.*

So, in an Action upon the Caſe for not doing a Thing which he ought to do of common Right. *R.* 1 *Sal.* 22. *R.* 1 *Sal.* 360. *Mod. Ca.* 311.

So, in an Action upon the Caſe againſt a Sheriff for entring into his Franchiſe; tho' he muſt have it by Grant, and the Sheriff of common Right hath the Return and Execution of Writs. *R. Sho.* 18.

So in Treſpaſs, the Plaintiff need not to make a Title. *R.* 2 *Bul.* 288.

Tho' it be for a Refuſal of Toll. 2 *Bul.* 288.

And if he makes a Title, it will be Surpluſage, and he may give any other Title in Evidence. *R.* 2 *Bul.* 288.

Yet, it is neceſſary that the Plaintiff ſhould ſhew the Common or Way, *&c.* to be his own, otherwiſe it may be the Common, *&c.* of the Defendant. *R. after Verdict.* 2 *Cro.* 158, 9.

(C. 40.) When a Title ſhall be ſhewn in the Replication.

And if the Defendant juſtifies, the Plaintiff ought to ſhew a Title in his Replication. *R. in B. R. Tr.* 8 *W.* 3. *int. Stroud and Birt.* 4 *Mod.* 424.

(C. 41.) When in the Bar.

So, in Treſpaſs, if the Defendant juſtifies for Damage feaſant, it is not ſufficient to ſay that he was poſſeſſed, without ſhewing by what Title. *R. on a Special Demurrer.* 4 *Mod.* 419. *Vide Poſt*, (E. 21, 22.

So,

So, if the Defendant juſtifies as Servant to *A.* he ought to ſhew what Title *A.* had, and it is not ſufficient to ſay that he was poſſeſſed. *R. on a ſpecial Demurrer.* 4 *Mod.* 419. 1 *Rol.* 393, 4.

So, if he juſtifies by *Molliter Manus impoſuit* in Defence of the Poſſeſſion of *B. R. Mo.* 846. *Semb. Lut.* 1497.

So, if he juſtifies Damage-feaſant. *R. cont.* 2 *Mod.* 70. 3 *Mod.* 132. *R. acc. Lutw.* 1492. *R. acc.* Where the Treſpaſs is *quare Clauſum fregit*; for the Plaintiff pretends Title to the Soil. *Sal.* 643.

But where the Defendant juſtifies the Taking Damage-feaſant, where Treſpaſs is brought for taking Goods only, it is ſufficient without ſhewing a Title to the Poſſeſſion; for this could not be in Debate. *R. Sal.* 643.

And if the Plaintiff ſhews a Title, and fails in it, the Declaration is bad. *Vide Ante*, (C. 29, 39.)

(C. 42.) But a Title in the Defendant is ſufficient to be alledged generally.

So, if the Plaintiff alledges a Title in the Defendant, he need not ſhew it preciſely; but it is ſufficient in general Terms: As, in a *Scire facias* againſt the Conuſee of a Statute, who has purchaſed Part of the Lands of the Conuſor, and ſued an Extent againſt the Plaintiff, who is the Purchaſer of the other Part, it is ſufficient to ſay, that the Defendant *perquiſivit ſibi et Hæredibus, Virtute cujus &c. fuit poſſeſſionatus*, without ſhewing that the Deed was inrolled. *R. Mar. pl.* 97, 108.

(C. 43.) So if it be alledged by Way of Inducement.

So, if a Title be only Conveyance or Inducement to the Action, it need not be alledged preciſely. *Vide Ante*, (C. 31.)—*Poſt*, (E. 10.)

As, in an Action upon the Caſe for a Nuſance, if the Plaintiff alledges that he was poſſeſſed for a Term of Years, it is ſufficient, without ſhewing the Commencement of the Term; for the Title is only Inducement to the Action. 2 *Mod.* 71.

So, if he ſays that he was poſſeſſed, it is ſufficient without ſaying for Years. *Lut.* 120.

So, in Covenant, it is ſufficient to ſay, that by Indenture he demiſed, without ſhewing by what Title he was ſeiſed.

Or, that being poſſeſſed for Years he demiſed, without ſaying by what Title, or for what Term poſſeſſed. *R. Cart.* 30.

So in Debt againſt a Sheriff for Money levied on a *Fieri facias* out of *B. R.* on a Judgment in *C. B.* it is ſufficient to ſay, that the Record was duly removed into *B. R.* without ſaying how, by Writ of Error or otherwiſe. *R. Cro. Car.* 539.

(C. 44.) When a Declaration ſhall ſhew a Breach.

The Declaration ought to ſhew a Breach of the Covenant, Promiſe, *&c.* on which the Action is founded.

And if a good Breach be not aſſigned, the Defendant may demur generally. *Win. Ent.* 120. *Vide Poſt*, (C. 47, 8, 9.)

(C. 45.) How a Breach ſhall be aſſigned.

(C. 45.) In the Words of the Covenant.

And it is ſufficient, that the Breach be aſſigned in the Words of the Covenant, Promiſe, *&c.* As, if a Covenant, Promiſe, or Condition of an Obligation be to ſhew a ſufficient Record, it is ſufficient to ſay that he did not ſhew a ſufficient Record, tho' Iſſue cannot be joined upon it; for the Sufficiency of a Record does not lie in the Mouth of *Lay-Gens*, but the Defendant on ſuch Breach aſſigned may ſay that he ſhewed ſuch a Record, and recite it,

and upon Demurrer, the Court ſhall judge whether it is ſufficient. *R. Yel.* 39, 40.

If the Covenant be not to permit an Eſcape without a Warrant from the Sheriff, it is ſufficient to ſay that the Defendant permitted the Eſcape of *A.* without a Warrant, without alledging how *A.* was arreſted. *R.* 1 *Sid.* 30.

Covenant to do any Act for further Aſſurance; it is ſufficient to ſay that he did not make a Conveyance on Requeſt, without ſhewing any particular Conveyance refuſed; for the Covenant was to do *any* Act, *&c.* *R. Yel.* 45.

Covenant that he was ſeized of an indefeazible Eſtate; it is ſufficient to ſay that he was not ſeized of an indefeazible Eſtate, without alledging what Eſtate he was ſeized of, tho' the Writings of the Eſtate are in the Hands of the Covenantee. *R. Ray.* 14, 15. *Win. Ent.* 134. *acc. Vide Poſt,* (C. 49.)

Aſſumpſit that *firmam faceret,* Ang. *would make good* ſuch a Portion to *A.* on Marriage; Breach *quod non ſolvit nec aliquo Modo firmam fecit, &c.* is ſufficient. *R.* 2 *Rol.* 738. *l.* 30.

So where there are mutual Agreements and Promiſes, Breach, *Quod non performavit Agreamentum ſuum,* is ſufficient. *R.* 3 *Lev.* 319. 4 *Mod.* 188.

Covenant by an Apprentice, for not finding Victuals *et alia neceſſaria* in the Words of the Covenant, is ſufficient. *R.* 3 *Mod.* 69. 3 *Lev.* 170.

Breach for Want of Repairs in the Words of the Covenant, is ſufficient. *R. Lut.* 329.

Covenant that he will deliver up the Houſe well repaired at the End of the Term; Breach that he did not deliver it up, well repaired, is ſufficient; for if the Defendant pleads that he delivered it up, well repaired, the Plaintiff ſhall aſſign a particular Breach. *R.* 2 *Cro.* 170, 171.

Covenant to permit the Removal of Trees; Breach, *quod non permiſit ſed obſtruxit et obſtupavit,* is ſufficient. *R. Sho.* 252.

Breach, that he did not ſurrender a Copyhold, is ſufficient, tho' he does not ſhew a Court held. *R.* 2 *Cro.* 102.

In Debt on a Bond, that the Defendant will not waſte Goods, and that Defendant pleads, that he did not waſte, if the Plaintiff replies, that he did waſte Goods to the Value of 100 *l.* without ſaying what Goods, it is ſufficient. *R.* 1 *Lev.* 94.

Debt on an Obligation with a Condition to make a good Title to ſuch an Eſtate, after Performance pleaded, the Plaintiff may aſſign a Breach *quod non monſtravit bonum Titulum, &c.* *R. Carth.* 125.

Covenant to pay ſo much to *A.* to the Uſe of *B.* Breach, that he did not pay to *A.* for the Uſe of *B.* is good. *R.* 2 *Mod.* 138.

If the Promiſe or Covenant be in the Disjunctive, the Breach ought to be aſſigned, that he did not do the one, nor the other. *R.* 1 *Sid.* 440. 1 *Vent.* 64.

So, if a Covenant be that *A.* his Executors and Aſſigns ſhall repair, *&c.* Breach for not repairing ought to be, that *A.* his Executors or Aſſigns *non reparaverunt*; for if it be aſſigned in the Conjunctive it will be bad on a General Demurrer. *R. Cro. El.* 348.

But where the Act is to be done to *A.* or his Aſſigns, it is ſufficient to ſay, that he did not do it to *A.* for an Aſſignment ſhall not be intended, if it be not ſhewn on the other Side. *R.* 1 *Sal.* 139.

[So in Covenant againſt the original Leſſee, that he did not perform, is ſufficient, without ſaying, nor his Aſſigns. *Qui facit per alium, facit per ſe*; therefore if his Aſſigns have done it, the Breach is falſe. *Gyſe* v. *Ellis, M.* 6 *G. Str.* 228.]

[So in Covenant to pay, or *cauſe to be paid, to them or one of them,* the Breach in general *that he did not pay,* is ſufficient. *Aleberry* v. *Walby, M.* 6 *G. Str.* 229.

If a Covenant be to deliver Corn into a Barge to be brought by the Plaintiff, *ſuper vel ante* 1 *M.* Breach that he did not deliver *ſuper* 1 *M.* is ſufficient without ſaying *ſuper vel ante*; for the Delivery was to be into the Barge brought by the Plaintiff, and therefore could not bind the Plaintiff to any Time before the laſt Day. *R.* 1 *Sal.* 140. *(Vide Comyns Reports* 89. 1 *L. Ray.* 620.)

[In Debt on a Bye-law, for not paying 2 *s. per Annum*, quarterly, the Breach need not assign the Days of Payment. *Innholder's Case*, *M.* 24 *G.* 2. 1 *Wilf.* 281.]

(C. 46.) According to the Intent of the Covenant, &c.

So, if a Breach be assigned in Words, which contain the Sense and Substance of the Covenant, &c. tho' they are not the precise Words of the Covenant, it is sufficient: As, if a Promise be that *warrantizaret* the Debt of *A.* and the Plaintiff assigns a Breach *quod non solvit*, &c. it is well; for that is the Intent of the Promise. *R.* 1 *Sid.* 178. *R.* 2 *Rol.* 738. *l.* 15.

[So if a Policy insures a Ship against the *Barretry* of the Master, and the Breach is assigned, that the Ship was lost by the *Fraud and Neglect* of the Master, it is well assigned. *Knight* v. *Cambridge*, *P.* 10 *G.* 2 *Ld. Raym.* 1349. *Str.* 581.]

If a Covenant be to shew a sufficient Record, and he says that he did not shew any Record. *Adm. Yel.* 40.

If the Covenant be that the Plaintiff and his Wife shall enjoy; Breach, that the Plaintiff was ousted, is sufficient; for the Husband had the intire Possession. *R.* 2 *Cro.* 383.

[Lease from *A.* and *B.* his Wife to *C.* for seven, fourteen, or twenty-one Years, at *C.*'s Election, who covenants to pay *A.* and *B.* their Executors, &c. said Rent during said Term; *C.* enters and continues in Possession; *A.* dies; *B.* marries *D.* Rent is in Arrear; *D.* and *B.* bring Action of Covenant in the first seven Years, and assign for Breach, that *C.* has not paid to *D.* and *B.* the Breach is well assigned. *Ferguson* v. *Cornish*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1032.]

If an *Assumpsit* be to make good a Portion of 500 *l.* if the Plaintiff says that the Defendant did not pay, it is sufficient. *R. Jones* 228, 9.

If an Award be that *A.* shall pay, or procure a Stranger to be bound for the Payment, and the Defendant pleads Performance; it is sufficient for the Plaintiff to assign a Breach, that *A.* did not pay, without adding *nec procuravit* the Stranger to be bound for it; for the Award is void as to that. *Dan.* 557.

If a Promise be to deliver Goods *super vel ante* 19 *Jan.* Breach that he did not deliver *super* 19 *Jan.* is good; for Delivery at a Day precedent will not be good without Notice: At least after Verdict it is good. *R. inter Harman and Ouden B. R. Tr.* 12 *W.* 3. (*Vide* 1 *Sal.* 140. *Comyns's Reports* 89. 1 *L. Ray.* 620. *Cont.* where an Award was to pay Money *ad vel ante*. *R.* 3 *Lev.* 293.

(C. 47.) When it is not well assigned.

(C. 47.) If it does not comprehend the Effect of the Covenant.

But if a Breach assigned be not in the Words of the Covenant, but shorter, or larger than the Covenant, &c. it is bad: As, a Covenant for Enjoyment, without lawful Disturbance; Breach, that he was disturbed, is bad; for it should be, that he was *legitimo Modo* disturbed, in the precise Words of the Covenant, or otherwise he should shew by whom he was disturbed, and how. *R. Cro. El.* 914. *Yel.* 30. *Vide Post*, (C. 49.)

Promise to deliver a Horse in good Plight; Breach, that he did not deliver it, is bad. *R.* 1 *Vent.* 64.

Covenant to repair a Fence, except *in Parte occidentali*; Breach, that he did not repair, and does not say that the Want of Repair was in other than the West Side, and therefore bad. *R.* 2 *Jon.* 125.

Promise to pay a Bill of Costs, when taxed by two Attornies to be chosen between the Parties; Breach, that he did not produce any Bill, is not good. *R.* 2 *Sand.* 107.

Covenant to pay so much *per* Ton; Breach, that he has not paid for so many Tons and one Hogshead, is bad, for it was not *sec. Ratam*, and therefore Non-payment for the Hogshead is not within the Covenant. *R.* 2 *Lev.* 124.

Covenant *quod super Requisitionem manuteneat*, any Action in his Name; it is not good, if he shews an Action brought in his Name which abated, if he does not say, that it was upon Request. *R.* 1 *Leo.* 169.

Covenant

Covenant to pay 5*s.* *per* Day, after Notice that he would not act any more, Proviſo, that no Notice ſhall be given but in an acting Week; Breach, that he gave Notice *ſec. Formam Articulorum*, is not ſufficient, but he ought to ſay expreſsly that it was in an acting Week. *R. Sal.* 574. For the Proviſo is Part of the Covenant itſelf.

In *Aſſumpſit* to deliver Goods, or pay 20*l.* Breach, that he did not deliver, is not ſufficient, without ſaying, nor paid 20*l.* *R. Hard.* 320.

So, if a Breach be in theſe Words, *That he was not ſeiſed of a Well*, when the Demiſe was of a Meſſuage, with Liberty to have Water there, and he covenanted that he was ſeiſed of the Premiſſes; but he ought to ſay, *That the Leſſor had not Power to grant ſuch Liberty.* *R. Lut.* 608.

So, if a Breach be in the Words of the Covenant, *&c.* where the Words are in Part void, or Surpluſage, and do not contain the Effect of the Covenant, it is bad: As, if an Award be, that *A.* and a Stranger ſhall give a Bond; Breach, that *A.* and the Stranger did not give it, will be bad; for if *A.* only gives it, it is ſufficient, the Award being void as to the Stranger. *Dan.* 557.

If *A.* aſſigns his Office, and the Fees belonging to it, and engages that *B.* to whom he aſſigned ſhall receive them; it is not a good Breach, that *B.* did not receive them, but he ought to ſhew that *A.* prevented him. *Per* 2 *J.* 4 *Mod.* 44.

If the Breach does not ſhew a Diſturbance after the Plaintiff's Title, it is bad: As, on a Covenant to enjoy without the Interruption of *B.* if the Plaintiff ſays, that he entred 3 *Nov.* and that *B.* had a Leaſe, upon which he entred 1 *Oct.* it is not good. *R. Al.* 19.

So if a Breach is not certain and expreſs, it is bad.

(C. 48.) If it be not certain.

If a Covenant be, that an Apprentice ſhall not waſte Goods; Breach, that he waſted divers Goods, is not good, without ſaying what. *R.* 1 *Lev.* 94.

If the Breach is, That the Meſſuage was not repaired, and does not ſay in what the Defect was. *Bendl. pl.* 110. *Skin.* 344.

Yet, a general Breach is ſufficient in Covenant; and therefore, *that he ſold to A. and others, at ſeveral Times between ſuch a Day and ſuch a Day*, is ſufficient. *R.* 1 *Sal.* 139.

If a Covenant be, That the Plaintiff may enter and enjoy without Let or Demand of the Defendant; Breach, that he did not enter and enjoy by Reaſon of the Let or Demand of the Defendant, is bad. *Semb. Hard.* 132.

If a Covenant be, to find Meat, Drink, and other Neceſſaries, and the Breach be in the ſame Words, without ſaying what Neceſſaries, it is bad. *R.* 2 *Cro.* 486.

If a Breach be, *non performavit Agreamentum*, without ſaying, in what Particular, it is bad. *Skin.* 344.

But a Breach badly aſſigned ſhall be aided after a Verdict, which finds for the Plaintiff. *R.* 2 *Jon.* 125. *R. Skin.* 344.

So, in Covenant, if one Breach be well aſſigned, and another ill, the Plaintiff, on an entire Demurrer to the whole Declaration, ſhall have Judgment for the Breach well aſſigned, and ſhall be barred for the Reſidue. 2 *Sand.* 380. *Vide Ante*, (C. 32.)

So a Breach aſſigned in the Words of the Covenant, *&c.* where the Words do not import any ſuch Breach, is not good: As, if the Leſſor covenants, that the Leſſee ſhall enjoy during his Term; Breach, *quod non gaviſus fuit*, is not ſufficient, for the Covenant is not broke, but by Diſturbance by a lawful Title. *R. Vau.* 121. *R. Hob.* 35. *Win. Ent.* 120.

(C. 49.) If it does not ſhew an Interruption by Title. *Vide Poſt*, (E. 25, 6.)

So, in Covenant for quiet Enjoyment of 20 Tons of Copperas; Breach *Quod non potuit gaudere, &c.* is not good, without ſhewing a lawful Diſturbance. *R. Cro. El.* 914. *Yel.* 30.

So, in *Aſſumpſit* for quiet Enjoyment; Breach, that he did not quietly enjoy, is not good. *R. cont. Dy.* 328. *a.* *R. acc.* 2 *Cro.* 425.

In

In *Aſſumpſit* to enjoy without Diſturbance, Breach, that a Stranger made a Diſtreſs upon him, is not good, without ſaying, that the Diſtreſs was upon an elder Charge. *R.* 2 *Cro.* 444.

So, in Debt on a Bond for quiet Enjoyment; Breach, that he was ouſted, without ſaying by an elder Title, is bad. *R. Dy.* 328. *a. in Marg. R. Cro. Car.* 5.

A Condition or Covenant, that the Leſſee ſhall not ouſt the Tenants, inhabiting within the Manor, of their Tenements, if they do Duty according to the Cuſtom; Breach, that he ouſted *B.* a Tenant inhabiting his Tenement, Parcel of the Manor, is not good; for perhaps *B.* was only a Tenant at Will. *R.* 1 *Leo.* 246.

So, in Covenant, if the Plaintiff for Breach aſſigns, that *A. habens legal' Titulum* entred, it is not good, without ſhewing what Title *A.* had. *R.* 2 *Sand.* 180. 1 *Sid.* 466. *R.* 3 *Mod.* 135. *R. cont.* 2 *Lev.* 37. *R. acc.* 1 *Lev.* 301. 1 *Mod.* 294.

So, if *A.* as Attorney to another, makes a Demiſe and covenants, that the Leſſee ſhall enjoy; if the Leſſee in Covenant ſhews a Recovery againſt him in Treſpaſs, without ſhewing the Title, it is not good. *R. per* 2 *J.* 2 *Vent.* 62.

So, if in Debt on a Bond for Enjoyment of Land without Eviction; the Defendant pleads Conditions performed, and the Plaintiff aſſigns for Breach, a Recovery againſt him, it is not good, without ſaying it was by an elder Title. *R.* 2 *Cro.* 315. *R.* 1 *Lev.* 83.

And tho' the Defendant rejoins, that the Recovery was by *Covin*, and it be found for the Plaintiff; yet the Breach is not aided by the Verdict. *R. and Judgment cont. reverſed.* 2 *Cro.* 315.

So, if it be for the Enjoyment of a Way, till *A.* is of full Age, and he ſays, that *A.* obſtructed him, without ſaying by Title. *R.* 3 *Lev.* 305.

So, in Covenant for enjoying, without the Interruption of *B.* and all claiming under him, and he ſays, that he was interrupted by *A.* who claims under *B.* without ſaying how, or by what Title. *R. cont.* and afterwards reverſed by all the Juſt. and Barons. *Cro. El.* 823.

In Covenant to ſave harmleſs from Arrears of Rent; Breach, that he did not pay, is not ſufficient, without Damnification. *Skin.* 397.

But the Breach is well aſſigned, that *A. habens legal' Titulum Virtute Dimiſs' fact'* before the Covenant to the Plaintiff, tho' it does not ſhew what Title *A.* had. *R.* 3 *Lev.* 325.

If there are ſeveral Covenants, one, that *A.* ſhall well ſerve, the other, that if he embezzles, *&c. B.* upon Notice ſhall make Satisfaction; if the Breach be, that *A.* embezzled, without ſaying that he gave Notice, it will be a good Breach on the firſt Covenant. *R. Cro. El.* 831.

So, where the Matter lies properly in the Knowledge of the Covenantor, a Breach in the Words of the Covenant is ſufficient: As, if a Leſſor covenants that he has full Power to make the Demiſe; it is ſufficient to ſay, that he had not Power, without ſhewing in whom the Eſtate was; for this lies more in the Notice of the Leſſor. *R.* 9 *Co.* 61. *a. Cont. Win. Ent.* 122. *Vide Ante*, (C. 45.)

So where the Covenant is againſt Interruption by the Covenantor himſelf, Breach, that he himſelf entred, *&c.* is ſufficient, without ſhewing by what Title. *R.* 2 *Cro.* 383. *R. Cro. El.* 544.

So, if a Covenant or Promiſe goes only to the Poſſeſſion, Eviction is ſufficient, without ſhewing the Title. *R.* 2 *Lev.* 194. *R. Dy.* 328. *a. Vide ibid. in Marg. Semb. cont. per* 2 *J.* 2 *Vent.* 62.

So, if a Covenant be againſt the Act of a particular Perſon, Interruption is ſufficient, without ſaying by what Title. *R. Cro. El.* 213. *Adm.* 2 *Vent.* 62. *R.* 2 *Lev.* 37.

(C. 50.) Averment in a Declaration.

(C. 50.) When neceſſary.

The Plaintiff in his Declaration ought to aver all that is neceſſary for the Maintenance of his Action.

[If a Declaration in Aſſault and Battery begins with *quod cum*, it is bad, for want of Averment, (in *B. R.* not in *C. B.* where they proceed by Original) and Judgment ſhall be arreſted. *Smith* v. *Reynolds*, *T.* 10 & 11 *G.* 2. *Andr.* 21.]

But the Plaintiff need not aver his Count, by *Hoc parat' eſt verificare*. *Pl. Com.* 342. *a.* *Co. L.* 303. *Vide Poſt*, (E. 33.)

(C. 51.) Performance when it ſhall be averred. Condition precedent.

And therefore, in all Caſes where the Eſtate or Intereſt commences on a Condition precedent, be the Condition or Act in the Affirmative or Negative, and to be performed by the Plaintiff, the Defendant, or any other, the Plaintiff ought, in his Count, to aver Performance. *R.* 7 *Co.* 10. *a.* *Ughtred.*

As, if a Man grants an Annuity to another, when he is promoted to ſuch a Benefice, &c. the Plaintiff in Annuity ought to aver, that he is promoted, &c. *Pl. Com.* 25. *b.*

If a Man deviſes, that, if his Goods are not ſufficient to pay his Debts, his Land ſhall be ſold; he, who avows under the Vendee, ought to aver preciſely, that the Perſonal Eſtate was not ſufficient. *R. Jon.* 328.

If a Man promiſes to ſurrender Land on Payment of ſo much Money, in *Aſſumpſit* the Plaintiff ought to alledge Payment, or a Tender and Refuſal. *R. Cro. El.* 889.

[If in Conſideration that *A.* at the ſpecial Requeſt of *B.* would execute a general Releaſe, (to bear Date before this Agreement) *B.* will pay, &c. *A.* muſt aver, that he gave or tendered the Releaſe. *Collins* v. *Gibbs*, *M.* 33 *G.* 2. 2 *B. M.* 899.]

So, if a Man promiſes as a Surety or *Fidejuſſor* for another, in *Aſſumpſit* againſt him for Non-performance of the Promiſe, the Plaintiff ought to aver, that he for whom he was Surety has not performed. *R.* 2 *Cro.* 500.

If Bail be bound in a Recognizance that the Defendant ſhall appear in eight Days after Warning, and if he be condemned ſhall render himſelf or pay, &c. the Plaintiff ought to ſhew that he was warned; for it is a Condition precedent. *R.* 2 *Cro.* 46.

If the Defendant juſtifies an Arreſt 10 *Oct. Virtute Warranti* of the Quarter Seſſions, 9 *Oct.* he ought to aver, that the Seſſions continued till the Arreſt. 2 *Lev.* 229.

[Tender of Stock muſt be on the very Day, notwithſtanding the Cuſtom of the *Alley* to allow a Day or two. *Per Pratt* C. J. *Bullock* v. *Noke*, *H.* 10 *G. Str.* 579. *N. B. King* C. J. in a like Caſe left it to the Jury, who found it a good Tender.]

[Tender of Stock muſt be at the laſt Part of the Day that it can be accepted. *Duke of Rutland* v. *Hodgſon*, *T.* 13 *G.* *Str.* 777.]

[The Buyer of Stock muſt be called at the Books, to make it a good Tender. *Thornton* v. *Moulton*, *M.* 9 *G.* *Str.* 533.]

[If Stock and Dividends are to be transferred, the Declaration muſt ſhew what the Dividends were, and that they were all tendered. *Bowles* v. *Bridges*, *P.* 2 *G.* 2. *Str.* 832.]

[On a Contract for Sale of Stock, Tender of the Stock by a third Perſon appointed by the Seller is not ſufficient, for the Purchaſer is not obliged to accept it from a third Perſon. *Rhodes* v. *Lovit. in Sc. H.* 1720. *Bunb.* 70. *Vide Merrit* v. *Rane*, *Str.* 458. where a third Perſon attending by Purchaſer's Appointment to pay for and accept Stock was held good.

[If Tender of Stock was to have been on a Non-transfer Day, it muſt be ſhewn, that Leave to transfer was actually obtained. *Clerk* v. *Tyſon*, *H.* 8 *G*, *Str.* 504.]

(C. 52.) The Cauſe or Conſideration of the Duty demanded.

So, if the Thing demanded is granted for ſuch a Cauſe or Conſideration, this ought to be averred to have been performed; for it is in the Nature of a Condition precedent: As, if I promiſe 20*s.* to *A.* for his going with me to *Rome*, he ought to aver his going to *Rome*; for upon that the Duty commences. 7 *Co.* 10. *b.*

Or, for his Service for a Year, he ought to aver his Service. *Hob.* 106.

Or in Conſideration of his Forbearance for a Week, he ought to aver his Forbearance. *R. Cro. El.* 272.

So the Cauſe or Conſideration of a Patent, if it be executory or the Suggeſtion of the Party, ought to be averred. *Vide Poſt*, (C. 62, 3, 4, 5.)

(C. 53.) Tho' there are mutual Agreements, if the Thing to be done for ſuch a Conſideration is by Agreement to be done at a Day ſubſequent to the Performance of the Condition.

So where there are mutual Agreements, and the one agrees to give a Hawk at ſuch a Day, and the other agrees for the Hawk to deliver a Horſe at a ſubſequent Day: in an Action for the Horſe, the Delivery of the Hawk muſt be averred; for that was the Conſideration of the Promiſe. *Lut.* 251. 1 *Salk.* 171.

If *A.* agrees to build a Houſe, and *B.* agrees to pay 10*l. pro Labore ſuo*, and there are mutual Promiſes, in an Action by *A.* for the Money, he muſt aver Performance of the Work. *R. per* 2 *J. Twiſd. cont.* 2 *Sand.* 351. 2 *Lev.* 23.

So, if *A.* agrees to aſſign a Leaſe to *B.* and *B.* agrees to pay *proinde* 250*l.* and there are mutual Promiſes, if *A.* ſues for the 250*l.* he muſt aver an Aſſignment of the Leaſe. *R. cont. Ellis Dub.* 2 *Mod.* 34. This Reſolution denied to be Law. *Sal.* 172.

If *A.* agrees to pay 10*l.* to *B.* within ſix Months, *B.* transferring ſo much Stock to him, and *B.* gives a Note to *A.* to transfer ſo much Stock to him, paying 10*l.* if *B.* ſues for the 10*l.* he muſt aver that he has transferred, or offered to do it; and if *A.* ſues for not transferring, he ought to aver and prove Payment or a Tender of the 10*l.* for they are Conditions precedent, tho' there are mutual Promiſes. *Per Holt.* 1 *Sal.* 112.

So, if mutual Agreements are to be performed reciprocally on a precedent Act by the other. As, if *A.* covenants to transfer Stock to *B.* on Payment of ſo much, and *B.* covenants to accept ſuch Transfer, and then to pay; in Covenant, *&c.* for Non-payment, *A.* ought to aver a Tranſfer or a Tender. *R. per C. B. But reverſed per* 3 *J. in B. R. But affirmed in Parliament.* 2 *Mod. Ca.* 68, 381.

So, if there are mutual Agreements, and one agrees to do his Part at an indefinite Time, and the other in Conſideration thereof to pay *&c.* *R.* 2 *Mod. Ca.* 40.

(C. 54.) When Performance need not be averred. Where there are mutual Agreements.

But where there are mutual Promiſes, generally, Performance need not be averred. 7 *Co.* 11. *a. Adm. Lut.* 250. *R. Mar. pl.* 114. *R. Lut.* 224. *Cro. El.* 889.

As, if a Man promiſes to deliver a Cow, and the other promiſes Payment of 20*l.* in an Action for the Money, the Delivery of the Cow need not be averred. *R. Hob.* 88. *Agreed per Holt. Lut.* 250. *Dan.* 72.

[A Covenant to pay *upon transferring* Stock is mutual. *Wyvil* v. *Stapleton*, *M.* 11 *G. Str.* 615. *Dawſon* v. *Myer*, *T.* 12 *G. Str.* 712.]

If a Man promiſes to deliver ſo many Tons of Iron, and the other promiſes Payment, the Plaintiff need not aver the Delivery of the Iron. *R. Yel.* 133.

If there be an Agreement that *A.* ſhall pay ſo much on ſuch a Day, if *B.* will promiſe to maintain an Infant for ſo many Years, and there are mutual Promiſes thereon; in *Aſſumpſit* for the Money, *B.* need not aver that he promiſed *&c.* *R. Lut.* 223, 4.

If *A.* promiſes to take an Apprentice, and *B.* in Conſideration thereof to pay ſo much. *R.* 1 *Lev.* 87.

Or to provide Soldiers to be tranſported, and *B.* to provide Ships to tranſport them. *R. Sti.* 186, 7. 2 *Mod.* 75.

If *A.* covenants to account, and *B.* to allow on ſuch Account ſuch a Thing. *R.* 2 *Mod.* 76.

So, where there are mutual Covenants, the Plaintiff need not alledge in Covenant, that he has performed the Covenants on his Part. *R.* 1 *Rol.* 414. *l.* 40, 55.

So,

So, where the Plaintiff alledges an Agreement and mutual Promiſes to perform, Performance by the Plaintiff need not be alledged, tho' they ought to be performed. *R. Hard.* 103.

If *A.* in Conſideration that *B.* undertook not to ſue a Bail Bond againſt him, and to give him the Benefit of an Outlawry aſſumes to pay *B.* 400*l.* Averment, that *A.* had the Benefit of the Outlawry without ſaying that he did not ſue the Bail Bond, is ſufficient. *R.* 1 *Lev.* 20.

And in Caſe of mutual Promiſes, the Plaintiff need not alledge Performance of all on his Part to be performed. *Adm: Lut.* 223, 4.

[If Plaintiff declares, that in Conſideration he had agreed to deliver Cloth to Defendant, Defendant agreed to pay him Money in Caſe *A.*'s Horſe beat *B.*'s, which he avers he did, he need not aver Delivery of the Cloth; but if it is, that in Conſideration Plaintiff would deliver Cloth, Defendant would pay, then the Delivery muſt be averred. *Martindale* v. *Fiſher*, *P.* 18 *G.* 2. *Wilſ.* 88.]

(C. 55) Tho' one Thing is to be done in Conſideration of another, if it be agreed to be done at a Day precedent.

So, where there are mutual Agreements, and the Thing on the one Part is in Conſideration of a Thing on the other Part, but to be performed at a Day before the Thing on the other Part, there ſuch Conſideration need not be averred to be performed. *Lut.* 250. 1 *Sal.* 171.

As, if a Man agrees to ſerve another in War, and the other agrees to pay him ſo much for his Service at a Day before the War began, an Action lies for the Money without an Averment of the Service. *R. Lut.* 250.

If a Man, in Conſideration of 10*l.* to be paid after a new Leaſe granted, promiſes to obtain a new Leaſe; in *Aſſumpſit* for not obtaining it, the Plaintiff need not alledge that he is ready to pay the 10*l.* *R. Cro. El.* 249.

If a Man covenants to aſſure Land to *A.* for the Conſideration *after mentioned*, and *A.* covenants for the Conſideration *aforeſaid* to pay ſo much; in Covenant for the Money it is not neceſſary to aver, that he has aſſured. *R.* 1 *Rol.* 415. *l.* 5.

So, in Debt on a Bond for performing an Award, if the Award be, that one ſhall pay 10*l.* and the other in Conſideration thereof ſhall releaſe, and a Breach is aſſigned for not releaſing, there is no need to aver Payment, for he has a mutual Remedy. *R.* 1 *Rol.* 415. *l.* 20. *Cro. Car.* 384.

In Debt on a Bond to pay 50*l.* on Marriage, or on 1ſt *February* next, Proviſo, that the Plaintiff juſtifies the Truth of the Declaration under his Hand and Seal given to Defendant of the ſame Date with the Bond; Plaintiff need not aver that he has juſtified the Truth *&c.* *Dub. Hard.* 9.

(C. 56.) Where there are mutual Remedies.

So, where there are mutual Remedies: As, if a Man promiſes to deliver Metal made into Pewter *capiendo inde* ſo much as he reaſonably deſerves, in *Aſſumpſit* for not delivering it, there is no Need to aver, that he tendred ſo much as he deſerved; for it is not a Condition precedent, and the Defendant may have Debt for what he deſerves, or may detain at his Election, and then it will come on his Part. *R.* 1 *Rol.* 466. *l.* 40.

If *A.* covenants to repair a Houſe before *Mich.* and *B.* covenants that, *ab et poſt Tempus quale* A. *repararet*, he will repair; in Covenant againſt *B.* for not repairing after *Mich.* it is not neceſſary to aver that *A.* repaired before; for *poſt Tempus &c.* does not refer to the Repair, but to the Time when the Lien upon *B.* to repair begins, and Covenant lies againſt *A.* if he did not repair before *Mich.* *R.* 1 *Rol.* 416. *l.* 40.

If Articles be, that *A.* gives to *B.* 500*l.* for his Land; in Debt for the 500*l.* there is no Need to aver that he has conveyed the Land; for there is a mutual Remedy when both have ſealed the Deed. *R.* 1 *Sand.* 320. *R. Lut.* 496.

So, if *A.* covenants to transfer Stock to *B.* *ſuper vel ante* 21 *Sept.* and *B.* covenants to pay ſo much to *A.* *ſuper vel ante* the ſame Day. *R.* 2 *Mod. Caſ.* 105, 6, 294.

[On an Indenture between two Parties, there are mutual Remedies, on a Deed-Poll there is not. *Lock* v. *Wright*, *T.* 9 *G.* *Str.* 569.]

(C. 57.) Matter *ex poſt facto* which deſeats an Eſtate or Intereſt.

So, where any Eſtate or Intereſt paſſes or veſts immediately, and is to be defeated by a Condition ſubſequent, or Matter *ex poſt Facto*, be it in the Affirmative or Negative, or to be performed by the Plaintiff, or the Defendant, or any other; Performance of that Matter need not to be averred: As, if a Man grants an Annuity for the Maintenance of ſix Soldiers for the Defence of a Caſtle, the Plaintiff in Annuity need not aver, that he has maintained *&c.* *R.* 7 *Co.* 10. *a.*

If a Grant be of Annuity to *A.* 'till he be advanced to a Benefice; *A.* in Annuity need not ſay that he is not yet advanced. 7 *Co.* 10. *a. b.* *Pl. Com.* 25. *b.* 30. *a.* 32. *b.*

(C. 58) Performance how alledged. According to the Intent, *Vide Condition* (G. 12.)

And he ought to aver Performance of the Intent of the Covenant *&c.* for it is not ſufficient to purſue the Words, if the Intent be not alſo performed. As, on a Promiſe in Conſideration that he would cauſe *A.* to come to be bound to the Defendant for 20*l.* it is not ſufficient to aver that he cauſed *A.* to come to be bound, but he ought to ſay, that he was bound. *R. Yel.* 50.

On a Promiſe to drain Lands, *ita quod ſint ſiccæ in Extremitate Hiemis*, viz. *aliquo Tempore inter* All Saints *and* Candlemas, it is not ſufficient to ſay that *fuerunt ſiccæ in Extremitate Hiemis*, viz. *aliquo Tempore* between thoſe Feaſts, but it ſhould be ſaid that *fuerunt ſiccæ* for all that Time, or that they did not overflow *aliquo Tempore &c.* for that was the Import of the Words. *R.* 2 *Rol.* 246. *l.* 30.

(C. 59.) Exact Performance, *Vide Condition* (G. 11.)

And he ought to ſhew an exact Performance. As, on a Promiſe in Conſideration that he would procure 20*l.* for one Year, it is not ſufficient to ſay that he procured 10*l.* 23d *April*, and 10*l.* 23d *June*; for he ought to procure the Whole for a whole Year. *R. Yel.* 87.

So, if it be to procure 20*l.* in Gold, 10 Guineas, and the Reſidue in Silver, is not ſufficient. *Ibid.*

So, on a Promiſe to an Attorney in Conſideration that he will acknowledge Satisfaction on Record, *&c.* it is not ſufficient to ſay that he *tanquam Attorn'* acknowledged Satisfaction; for perhaps his Warrant was revoked. *R.* 1 *Rol.* 366.

So, on a Promiſe in Conſideration of a Leaſe of Lands for 10*l.* *per Ann.* it is not ſufficient to ſay that he made a Leaſe of the ſaid Land, without ſaying that it was for 10*l.* *per Ann.* *R.* 3 *Bul.* 35.

On a Promiſe to pay before the next Journey by the Plaintiff to *London*, it is not ſufficient to ſay that *incepit Iter* ſuch a Day, but it ought to be ſaid that he made his next Journey *&c.* *R. Yel.* 176.

In Conſideration that he would repair on Requeſt; it is not ſufficient to ſay *Reparavit*, if he does not add, *on Requeſt.* *R.* 2 *Leo.* 53.

[So on Note, "I promiſe to pay *A.* on his transferring," it is not enough that *B.* his ſurviving Partner tenders. *Fowler* v. *Samwell*, *M.* 12 *G.* *Str.* 653.]

(C. 60.) Muſt ſhew to the Court, that it is well performed.

And he ought to ſhew Performance with ſuch Certainty, that the Court may judge that the Intent of the Covenant is performed: As, on a Promiſe in Conſideration that he would procure a ſufficient Man to be bound; it is not enough to ſay that he procured a ſufficient Man; but he ought to ſhew of what Sufficiency he was, whereby the Court may judge whether he was ſufficient or not. *R. Yel.* 49. *Dan.* 71.

So, on a Promiſe in Conſideration that he would execute an Indenture, *&c.* *per quam barganizaret*; it is not ſufficient to ſay that he executed the Indenture *aforeſaid*, but he ought to ſhew that he executed ſuch an Indenture, *per quam barganizavit*, *&c.* *R. Yel.* 111.

But, if the Conſideration was to execute ſuch an Indenture in certain, *That he executed the Indenture aforeſaid*, is ſufficient. *Yel.* 111.

If a Promiſe be to deliver 15 *Todas Lanæ* to be choſen by *A.* out of 17; in *Aſſumpſit* for not delivering them, he ought to ſhew that *A.* choſe 15 *Todas*; for the Election is the firſt Act. *R. after Verdict.* *Yel.* 76.

On

On an *Aſſumpſit* in Conſideration that he would abate 10 *l.* Part of a Debt, it is not ſufficient to ſay, that he did abate, without ſhewing how. *R. Cro. El.* 477.

In Conſideration to acquit *A.* of a Debt, it is not ſufficient to ſay that he acquitted him, without ſhewing how. *R.* 2 *Cro.* 503.

If a Declaration recites an Agreement that *A.* would leaſe for Years to *B.* but that *B.* refuſed to ſeal the Indenture, becauſe a Covenant was inſerted for Repair generally, and that the Defendant, in Conſideration that *B.* would ſeal, and the Plaintiff would give a Bond for the Performance of the Covenants, aſſumed to repair during the Term; it is not ſufficient to ſay that *B.* ſealed, without ſhewing a Demiſe was made. *R. Yel.* 18.

If a Deviſe be, that Land ſhall be ſold, if his Goods are not ſufficient to pay his Debts; in Avowry by the Vendee, he ought to ſhew how much the Debts, and how much the Goods are, ſo that the Court may judge whether the Condition precedent to the Deviſe be performed. *R. Jon.* 328.

If the Conſideration of an *Aſſumpſit* be that he ſhall give a Bond with Sureties; it is not ſufficient to ſay that he tendred a Bond, if he does not ſay in what Sum and what Sureties. *R. Hob.* 69.

But to alledge Performance in Words, which in Evidence import it, is ſufficient: As, if a Promiſe be to receive *A.* and *B. ut Hoſpites*, and to find Neceſſaries; if he alledges that he received them and found Neceſſaries, it is ſufficient, without ſaying, *ut Hoſpites*. *R.* 1 *Sal.* 25.

[So if the Conſideration is to make Sails worth 45 *l. that he made the ſaid Sails* is ſufficient. *Wallis* v. *Scott*, *E.* 4 *G. Str.* 88.]

If a Promiſe be to diſcharge from Arreſt; if he alledges *quod exoneravit*, it is ſufficient; for he need not ſay how, as in the Diſcharge of a Bond, or Rent. *R. Cro. El.* 914.

If a Promiſe be in Conſideration that he at the Requeſt of the Plaintiff would procure a Note of *B.* it is ſufficient to ſay that he procured a Note, without ſaying at his Requeſt; for a ſubſequent Requeſt was not intended. *R.* 2 *Vent.* 75.

But after Verdict it ſhall be aided, if the Plaintiff alledges a Performance, but does not ſhew how. *R.* 2 *Jon.* 125.

(C. 61.) **But it is ſufficient to ſhew a Performance in general Terms.**

But if the Plaintiff ſhews a certain and exact Performance, it is ſufficient in general Terms, without alledging particularly how he performed: As, on a Promiſe to pay *quant' diſpenderet* for the Officers of the Army in ſuch a Suit; an Averment, that he ſpent ſo much, is ſufficient, without ſhewing for what Officers in particular. *R. Ray.* 9.

On a Promiſe in Conſideration that *renunciaret* the Executorſhip, an Averment that *renuntiavit* is ſufficient, without ſaying before whom, or how. *Ray.* 400.

That *conaret Maritagium*; Averment, that *conatus fuit* and it took Effect is ſufficient, without ſaying how he endeavoured. *R. Ray.* 400. *Dan.* 72. *Mo.* 595.

That he would forbear a Suit; Averment, that he did forbear it, is ſufficient, without ſaying in what Court. *R. Ray.* 203.

That *Monſtraret Compot'*; Averment, that *monſtravit quoddam Compot' &c.* without ſaying *Compot' prædict'*, is ſufficient. *R. Ray.* 204.

That he would marry *A.* on Requeſt; Averment, that he married *A.* is ſufficient, without more. *R.* 2 *Cro.* 404. *Dan.* 73.

That he would pay as much as was agreed to be paid to *A.* it is ſufficient to ſay, that ſo much was agreed to be paid to *A.* without ſaying by whom. *Dub. Yel.* 17.

That he would forbear a Suit; it is ſufficient to ſay, that he did forbear generally, without ſaying *hucuſque*. *R.* 2 *Mod.* 24.

Or, that he forbore from the Time of the Promiſe *hucuſq*; is ſufficient, tho' to be intended a total Forbearance. *R.* 2 *Mod.* 24. *R. Hard.* 5.

That he would diſcharge from a Promiſe of Marriage; *quod exoneravit* is ſufficient, without ſhewing that he was preſent, or had Notice; for a full Diſcharge ſhall be intended. *R.* 1 *Rol.* 470. *l.* 5. *Sti.* 295, 303.

So, in *Aſſumpſit* to pay, *&c.* if he diſliked the Land in 14 Days, it is ſufficient to ſay, that he diſliked; for it ſhall be intended within the Time, otherwiſe, it ought to be ſhewn on the other Part. *R. Cro. El.* 834.

So, if a Promiſe be to pay in *Spaniſh* Money; Averment, that he gave a Bill for ſo many Dollars, is ſufficient. *R.* 2 *Cro.* 7.

So an Averment, that the Plaintiff has performed all on his Part to be performed, is ſufficient. *R. on Demurrer. Lut.* 253.

Or, *quod cum* the Plaintiff aſſumed to perform, *&c. Hard.* 103, 4.

So a Declaration on *Aſſumpſit* to pay ſo much to cure his Daughter, and another Count to pay ſo much for the Cure, tho' he does not aver that he has cured, it is ſufficient: for by the 2d Count it appears that ſhe was cured, and if this appears by any Part of the Record, it is well. *R. after Verdict.* 1 *Mod.* 14. *Dan.* 73.

Yet an Averment, that *paratus fuit et obtulit* to perform, is not ſufficient, if he does not ſay, that he was hindred by the Defendant. 2 *Sand.* 352. *R.* 1 *Rol.* 465. *l.* 30.

Yet *parat' et obtulit*, will be ſufficient after Verdict. *R.* 2 *Sand.* 352. 2 *Lev.* 23.

So, *parat' et obtulit* is ſufficient, where nothing is to be done on his Part, till the other has done a prior Act: As, if *A.* being a Bailiff, for 10 *l.* aſſumes to arreſt another at the Suit of *B.* it is ſufficient to aver that he was ready, but *B.* did not deliver him any Warrant. *R.* 1 *Rol.* 465. *l.* 40.

(C. 62.) When the Conſideration of a Patent ſhall be averred. When it is executory.

When the Conſideration of the King's Patent is executory, the Plaintiff in pleading ſuch a Patent muſt aver that the Thing is done: As, if the King grants *pro eo*, that I ſhall find a Lamp, releaſe a Debt, *&c.* it ought to be averred, that I have found the Lamp, releaſed, *&c.* 21 *Ed.* 4. 48. *Pl. Com.* 455 *a. Hob.* 231.

If a Grant be *pro Conſilio impendendo*, he ought to aver that he was ready to give Counſel. *Jon.* 294.

(C. 63.) Or the Surmiſe of the Party.

So, if the Conſideration of a Patent be the Surmiſe of the Patentee: As, if the King *pro eo* that the Manor is eſcheated grants; it ought to be averred that the Manor was eſcheated. 21 *Ed.* 4. 48, 49.

If the King grants an Office with all Fees, without naming any; in Pleading, it ought to be averred that there are Fees in certain, otherwiſe the Grant is only a Burthen and no Intereſt, and therefore revocable at Pleaſure. *R. Jon* 294.

(C. 64.) When not.

But, if the Conſideration of the Patent be executed, it need not be averred: As, if the King grants for Service done. *R. Pl. Com.* 455. *a. Hob.* 231.

(C. 65.) How it ſhall be alledged.

And it is ſufficient (when there ought to be an Averment) to aver the Conſideration to be performed, without more: As, if the King, in Conſideration of the Surrender of a Leaſe, grants, it is ſufficient to aver the Surrender made, without ſaying that there was a Leaſe; for the Surrender is the Conſideration. *R.* 1 *Co.* 43. *a.*

(C. 66.) When the Continuance of an Eſtate ſhall be averred *Vide Poſt*, (E. 19, 20, 1, 2, 3, 4.)

If the Plaintiff claims under One, who has only a particular Eſtate, as for Life, he muſt aver Continuance of the Eſtate. *Pl. Com.* 431. *a. Cro. El.* 18.

So he, who claims under a Tenant *pur auter vie*, ought to aver the Life of the *Ceſtuy que vie. Mo.* 306, 335. *Pl. Com.* 31. *a.*

So, if the Defendant avows for Rent on a Leaſe for Years, *if three Perſons ſo long live*, he ought to aver that one of them is alive. *R.* 2 *Mod.* 93. 1 *Mod.* 217.

Or for Years, *if the Leſſee ſo long live. R. Dal.* 101.

But

But Implication that a Life continues is ſufficient: As, in Ejectment for a Rectory, if it be found, that the Rector *fuit et adhuc eſt ſeiſit'*, it is a ſufficient Averment of his Life. *Dy.* 304. *a.* *R.* 2 *Jon.* 227. (C. 67.) How it ſhall be averred, *Vide Poſt*, (C. 77.)

So, in Ejectment on a Leaſe for Years if the Leſſor live ſo long, *quod ejecit Termino nondum finito*, is a ſufficient Averment of the Life of the Leſſor; for the Term would have been ended by his Death. *R.* per 3 *J. and aff. in Error.* 2 *Cro.* 622.

So, in an Avowry in Right of a Tenant for Life, that the Plaintiff *eſt, et Tempore quo fuit, infra Feodum*, is a ſufficient Averment of his Life. *R.* 2 *Cro.* 637.

So, if the Plaintiff, who claims by Leaſe from a Tenant for Life, ſays, *Virtute cujus fuit et adhuc eſt poſſeſſionat'*. *R.* 2 *Bul.* 263. *D.* 1 *Leo.* 281. 1 *Brownl.* 4.

In Treſpaſs for incloſing Land 1 *Maij*, in which he has Common, *per quod* he loſt his Common. (*per quod*) is a ſufficient Averment, that the Incloſure continued till the Time of Common. *R. but Dod.* doubted, becauſe it is the Concluſion of the Declaration, if it was not after Verdict. *R.* 2 *Rol.* 379.

So, in Ejectment on the Demiſe of *B.* if a Special Verdict finds that *B.* was alive, it ſhall be intended that he continued alive, if the contrary does not appear. *R.* 2 *Cro.* 146.

So Conuſance as Bailiff of Huſband and Wife, ſeized in Right of the Wife, who was Tenant for Life, for Rent *aretro exiſtente*, is a ſufficient Averment of the Life of the Wife on a general Demurrer. *R.* 2 *Lev.* 88. *Lut.* 1226.

So on a Special Demurrer. *Per* 2 *J. but Hale doubted.* 2 *Lev.* 88.

And by the *St.* 21 *Ja.* 13. After Verdict the Want of an Averment of a Life ſhall be aided, if he be proved to be alive. *Vide Amendment* (Q.)

So, by the *St.* 4 & 5 *An.* 16. After Judgment by Confeſſion, *Nil dicit*, *Non ſum inform'*, or Writ of Inquiry executed.

But the Continuance of an Eſtate of Inheritance need not be averred, for it ſhall be intended, if the contrary does not appear: And therefore if a Man claims under Huſband and Wife, ſeized in Fee in Right of the Wife, he need not aver the Life of the Wife. *R. Pl. Com.* 431. *a.* (C. 68.) When it ſhall not be averred.

So, if he pleads a Conveyance by a Tenant in Fee. *R. Lut.* 357.

So, if he claims under a Biſhop, Dean, *&c.* he need not aver the Life of the Biſhop, Dean, *&c.* *Pl. Com.* 431. *a.*

Tho' the Leaſe by the Biſhop was not confirmed, and ſo determines by his Death. *Per Dy.* *Pl. Com.* 264. *a.*

So, if he claims by Deſcent from Tenant in Fee, his Eſtate ſhall be intended continuing till his Death. *R. Lut.* 1172.

So, if he claims by a Leaſe for Years from Huſband and Wife, who was Tenant in Tail, he need not aver the Life of the Wife; for ſhe has the Inheritance, and her Huſband is ſeized in her Right. *R. Pl. Com.* 431. *a. Acc, Lut.* 357, 1226. *But it was R.* That the Verdict ought to find the Life of the Tenant in Tail. *Cro. El.* 407.

So, if he claims by Leaſe from Huſband and Wife ſeized for their Lives, and to the Heirs of the Huſband. *R. Cro. El.* 112.

So, if a Man makes Title in Aſſize to a Rent-Charge againſt the Feoffee of Tenant in Tail, he need not aver the Life of the Tenant in Tail; for the Eſtate of the Feoffee continues till the Diſcontinuance is avoided. *R. Cro. El.* 226.

So, if he pleads that it was the Freehold of *A.* who demiſed, *&c.* he need not aver the Life of *A.* for he ſhall be intended to have the Fee. *R. Cro. El.* 87.

So, if an Eſtate be granted to *A.* and his Heirs, till *B.* attains ſuch an Age, he who claims under *A.* need not aver the Life of *B.* for the Eſtate of *A.* who has a baſe Fee ſhall be intended to have Continuance till the contrary appears. *R.* 1 *Leo.* 281.

If a Leaſe be pleaded by *A.* Tenant for Life, and *B.* in Reverſion, there is no Need to aver the Life of *A.* *R.* 1 *Leo.* 177. *Cro. El.* 154.

So,

So, if a Man pleads an Extent by *Elegit*, he need not aver the Continuance of his Eſtate; for it ſhall be intended, where it does not appear by Record that the Extent may have been ſatisfied. *R. Hard.* 80.

If Leſſee for Life aſſigns his Eſtate to *A.* who leaſes at Will; in Treſpaſs by the Leſſee at Will, he ought to aver the Life of the Leſſee for Life, but he need not aver the Life of *A.* or the Continuance of the Will. 2 *Leo.* 95.

So, where the Continuance of the Eſtate is not neceſſary to the Action, it need not be averred: As, if a Leaſe be for Years, *if A. ſo long live*, and a Covenant that he has Power to leaſe, in Covenant for a Breach of it, the Life of *A.* need not be averred; for Covenant lies tho' he be dead. *R.* 9 *Co.* 60. *b.*

(C. 69.) Averment of a Requeſt. When there ſhall be a ſpecial Requeſt.

So the Plaintiff in his Declaration ought to aver a Requeſt.

And, if the Action be for a collateral Sum to be paid on Requeſt, the Requeſt is Parcel of the Agreement, and traverſable, and ought to be ſpecially alledged, with the Time and Place of the Requeſt. *Adm. Lut.* 231. *R. Cro. El.* 85. *R. Ow.* 109. *Cont. per* 2 *J.* 1 *Brownl.* 10. *R. acc. Jon.* 56, 85. *R. Sav.* 72.

Or for a collateral Matter to be done upon Requeſt. *Adm. Lut.* 231.

As in *Aſſumpſit* to pay all Sums expended for him. *R. Cro. El.* 83, 4.

To pay 6*s.* for every Stone of Wool delivered. *R. Cro. El.* 91.

To pay for Victuals for him, and his Horſe. *R.* 2 *Cro.* 183.

So, in Covenant for not delivering Timber for Repairs, he ought to alledge a ſpecial Requeſt. 1 *Brownl.* 23.

And the Want of a ſpecial Requeſt, when neceſſary, is not aided by Verdict. *R.* 3 *Bul.* 299.

Nor by pleading *Non Aſſumpſit* and a Verdict thereon; for that is no Waiver of the Requeſt. *R. Jon.* 86.

(C. 70.) When a general Requeſt is ſufficient.

But in *Aſſumpſit* for Money lent, or a meer Duty, *licet ſæpius requiſit'* is ſufficient. *R. Cro. El.* 73, 4. *Agr.* 2 *Cro.* 183. *Per Hought.* 2 *Cro.* 523. *R. Yel.* 66. *Hut.* 2. *Per* 3 *J. Cro. Car.* 35. *Agr.* 4 *Leo.* 2. *R. Cro. El.* 218. *R. Win.* 2.

So, in *Aſſumpſit* for a collateral Sum, if it is not to be paid upon Requeſt. *R. Lut.* 231. *R. Ow.* 109.

So, in *Aſſumpſit* to pay in Conſideration of Marriage; for it is in the Nature of a Debt. *R. Cro. El.* 229.

So, in *Aſſumpſit* for Repayment of Money received for a Horſe. *R.* 3 *Lev.* 364. *Skin.* 347.

So, in *Aſſumpſit* to pay, if he would procure a Note from *B.* for it; that he procured the Note, *et requiſivit ſolvere*, is ſufficient. *R.* 2 *Vent.* 74.

[So in caſe, that if Plaintiff made him a Set of Sails worth 15 *l.* Defendant would pay ſo much for them *on Requeſt*, *ſæpius Requiſit* is ſufficient. *Wallis* v. *Scott. E.* 4 *G. Str.* 88.]

So, in Debt on a Bill, *&c.* to be paid upon Requeſt, a general Requeſt is ſufficient. *R. Cro. El.* 548.

And where a ſpecial Requeſt is neceſſary, if the Plaintiff alledges a ſpecial Requeſt, but omits the Day or Time, and the Defendant does not join Iſſue on the Requeſt, but pleads *Non Aſſumpſit*, *&c.* it ſhall be aided. *R. Jon.* 56.

So, in Annuity, Obligation, *&c.* to pay upon Requeſt; no Requeſt is neceſſary. *R. Cro. El.* 548, 721.

So, if the Requeſt is executed, no Averment is neceſſary: As, if *A.* promiſes to pay, *&c.* in Conſideration that *B.* at his Requeſt would be a Knight. *R.* 2 *Lev.* 198.

(C. 71.) How Requeſt ſhall be made *Vide Condition* (L. 11.)

And if a Promiſe be by three, a ſpecial Requeſt to one is ſufficient. *D. Noy* 135.

If an Action be by an Executor on a Promiſe to pay to his Teſtator on Requeſt, if he alledges a ſpecial Requeſt by the Executor, and *licet requiſit'* only by the Teſtator, it is ſufficient; for the Action is founded upon a Requeſt by the Executor. *R. Hard.* 38.

Licet requisit' is as well as *in Facto requisivit*; for *licet* is affirmative. *R. Yel.* 121. (C. 72.) How alledged.

And, if it be said, that the Plaintiff at such a Day and Place shewed the Note, *et requisivit*, it is sufficient without saying *adtunc et ibidem*; for the Whole shall be intended to have been done at the same Time. *R.* 2 *Vent* 75.

So, if a special Request be alledged in the first Count, *similiter requisit'* is sufficient in the second Count; for it refers to the first. *R. Cro. El.* 240.

So the Plaintiff ought to aver Notice given to the Defendant, where the Action does not lie without Notice given: As, if the Act, on which the Plaintiff's Demand arises, be secret, and lies only in the Plaintiff's Mouth: As, if a Man promises, *&c.* to pay such a Rate for Wares as any other paid him, the Plaintiff ought to alledge Notice of the Rate that another gave. *R.* 2 *Cro.* 432. *R.* 1 *Rol.* 463. *l.* 25. *Hob.* 51. *Hard.* 42. (C. 73.) Averment of Notice. When necessary. *Vide Condition* (L. 8, 9.)

To deliver so much Corn, if the Plaintiff approve of it, at the Fair; the Plaintiff ought to give Notice, if he approved of it. *R. Cro El.* 249, 250.

To repay so much to *B.* if he disliked such Lands. *R. cont. Cro. El.* 834. 1 *Rol.* 464.

To seal such an Escrow as he or his Counsel shall devise. *R.* 1 *Rol.* 463. *l.* 5, 50.

To account before Auditors, whom the Obligee shall assign. *R.* 1 *Rol.* 462. *l.* 50.

To pay Plaintiff all his Costs in such a Suit. *Hard.* 42.

The Damages which the Plaintiff sustained by such a Battery. *Hard.* 42.

[When Rent is due to the Landlord, Notice of it must be given to the Plaintiff in Execution, or to the Officer, to maintain Action against either of them respectively. *Palgrave* v. *Windham*, *M.* 6. *G. Str.* 212.]

When Notice is necessary, it ought to appear that it was given in due Time: As, if a Man promises to pay as much as he disburses at such a Fair, before the End of the Fair, he ought to alledge Notice of his Disbursements given before the End of the Fair, otherwise it will be too late. *R.* 1 *Rol.* 469. *l.* 45. (C. 74.) How it shal bealleded. How Request shall be alledged, *Vide Ante*, (C.72.)

So it ought to appear that it was given to a proper Person: As, if a Condition be to repair upon Notice, Notice ought to be alledged to him, who had the intire Intereſt, and not to an Under-Lessee. *R. Yel.* 37. 2 *Cro.* 9.

And to him in Person. *R. Yel.* 37.

What Payment shall be to the Assignee of the whole Estate, *Vide Condition*, (G. 2.)

So where Request shall be to the Person, *Vide Condition*, (L. 11.)

But on a Sale of *East India* Stock, if demanded *ore tenus*, or by Writing at the *East India* House, an Averment, that he demanded *ore tenus*, and by Writing at the *East India* House is sufficient, without a Personal Demand; for the Usage is such. *R. Skin.* 391.

But if a Man is bound, covenants, or assumes to pay Money, to convey Lands, *&c.* on the Performance of an Act by a Stranger, Notice need not be alledged; for it lies in the Defendant's Cognizance as well as the Plaintiff's, and he ought to take Notice at his Peril: As, if he assumes to pay so much when *A.* marries. *R.* 1 *Rol.* 462. *l.* 10. (C. 75.) When not necessary *Vide Condition*, (L. 9.)

When *A.* returns into the Kingdom. *R.* 2 *Cro.* 462, 3. *R.* 1 *Rol.* 463. *l.* 6.

Or performs such a Journey. 1 *Rol.* 463. *l.* 13. *R.* 2 *Cro.* 137, 150.

So, if he assumes, *&c.* to pay so much as *A.* shall name. *R.* 2 *Bul.* 144. *R Cro. Car.* 133. 1 *Rol.* 464. *l.* 5.

To pay if *A.* does not pay. *R.* 2 *Cro.* 684. *R.* 1 *Rol.* 462. *l.* 25, 463. *l.* 45.

To pay so much for every Acre above 20, when *A.* measures them. *R.* 1 *Rol.* 462. *l.* 35.

To make ſuch Aſſurance as *A.* ſhall adviſe. *D.* 1 *Leo.* 105.

Or, as his Counſel ſhall adviſe. *Per Gawdy.* 1 *Rol.* 464. *l.* 2.

To diſcharge upon all Eſcapes. *R. Hob.* 14.

To ſtand to the Award of ſuch a one. *Hard.* 42.

To pay the Arrears found on Account. 8 *Co.* 92. *b.*

To be accountable for all Money paid to *A.* by *B.* *R.* 1 *Lev.* 47.

So, if he aſſumes, *&c.* to pay, *&c.* on the Performance of a certain Act by the Obligee himſelf, or on the Performance of an Act by him to any certain Perſon; for he takes upon himſelf to take Notice of it at his Peril: As, if a Man aſſumes, *&c.* to pay on the Marriage of the Obligee, *&c.* with *B.* *R.* 2 *Cro.* 102. *R.* 2 *Cro.* 228. *Yel* 168. *R.* 2 *Cro.* 405. 1 *Rol.* 461. *l.* 50. *R. Cro. Car.* 34. *Hut.* 80. *Per* Ch. J. 1 *Sid.* 36. 1 *Rol.* 463. *l.* 20. *R.* 2 *Bul.* 254. *R.* 3 *Bul.* 326. *R. Poph.* 164.

To pay, when the Obligee, *&c.* delivers a Horſe to *B.* *Per Yel.* 1 *Rol.* 461. *l.* 45.

Or returns to *London.* *Per Dod.* 2 *Bul.* 145. *R.* 1 *Rol.* 462. *l.* 15. *Cont. per Warb.* *Hob.* 68. *R. cont.* 1 *Bul.* 44.

Or returns from *Rome.* *Dub. Ow.* 108. *R. Hut.* 80.

Or delivers up the Bond. *R. Sal.* 457.

To indemnify when he ſhall be Surety for his Father to *A.* *D.* 1 *Leo.* 105. *R.* 2 *Cro.* 287.

To pay, if he borrows of any certain Perſon. *Per* 3 *J.* 1 *Bul.* 12.

To pay for every Acre, when it ſhall be meaſured. *R.* 2 *Cro.* 472, 391. 1 *Rol.* 462. *l.* 45.

To pay a Rate for what the Plaintiff ſhall ſell to *B.* *R.* 2 *Cro.* 432. *R.* 1 *Rol.* 463. *l.* 36.

To pay when *B.* attains his full Age. *Hard.* 42.

To ſurrender to *B.* or his Aſſigns on Requeſt, there need not be Notice of the Aſſignment. *R. Poph.* 136. 1 *Rol.* 464. *l.* 10.

To give him as much as will make him content. *R.* 1 *Leo.* 123.

To pay all Money delivered by *A.* to *B,* there need not be Notice of the Sums delivered to *B.* *R. Hard.* 42.

So, if he aſſumes in Conſideration of ſuch a certain Act, it is ſufficient to aver Performance of the Act, without alledging Notice of the Performance to the Defendant: As, if it be in Conſideration that ſhe diſcharged him of a Promiſe of Marriage, it is ſufficient to ſay *quod exoneravit ipſum,* without alledging that he had Notice; for it ſhall be intended that there was a full Diſengagement made to the Defendant himſelf in Perſon. *R.* 1 *Rol.* 470. *l.* 5.

[Debt for Freight on a Charter-party; if the Goods are laid to be delivered to Defendant himſelf, Plaintiff need not aver Notice of the Delivery. *Dodd* v. *Atkinſon, M.* 10 *G.* 2. *B. R. H.* 342.]

So, in Conſideration that ſhe come to his Houſe and offer to marry him, it is ſufficient to ſay, *quod venit et obtulit* to marry; for it ſhall be intended that the Offer was to himſelf in Perſon. *R.* 1 *Rol.* 470. *l.* 20.

So, in Debt for a Penalty at a Leet for not removing an Encroachment, it is not neceſſary to aver Notice of the Order of Removal; for every one within the Leet ought to take Notice of it. *R.* 1 *Rol.* 468. *l.* 20.

Or for the Penalty of a Bye-law concerning a Common; for every Commoner ought to take Notice of it. *R. Cro. Car.* 498.

(C. 76.) When a Fact ſhall be averred.

So the Plaintiff, in his Declaration, ought to aver every Fact, without being informed of which, the Court cannot judge whether the Plaintiff has Cauſe of Action. *Vide Action upon Statute,* (A. 3.)

To aſcertain the Caſe to be within a Statute.

As, in an Action founded on a Statute, the Plaintiff ought to aver every Fact neceſſary to inform the Court that his Caſe is within the Statute: As, in *Quare Impedit* by the King on the *St.* 13 *El.* 12. for not reading the thirty-nine Articles, it ought to be averred that it was a Benefice with Cure. *R.* 1 *And.* 62. *Lut.* 1089.

So, in *Quare Impedit* by the King founded on the *St.* 31 *El.* 6. for Simony. *Sem b. Lut.* 1089.

So,

So, in *Quare Impedit* by the Univerſity on the *St.* 3 *Ja.* 5. for the Benefice of a Recuſant, the Plaintiff muſt aver that the Patron was a Recuſant convict. *R.* 10 *Co.* 58. *a.*

So, in an Action on the *St.* 7 *Ed.* 6, 7. againſt buying Wood, Coal, *&c.* in *London*, *Weſtminſter* or Suburbs, and ſelling again unleſs by Retail, if the Plaintiff alledges that the Defendant bought at *Whitechapple*, *&c.* he ought to aver that *Whitechapple* is within the Suburbs. *Litt.* 162.

If a Man intitles himſelf by a Leaſe, which by a Proviſo in a Statute will be good, if the antient Rent be reſerved; he ought to ſhew that a Rent was reſerved, and aver it to be the antient Rent. *R. Pl. Com.* 105. *b.*

If, on an Action on the *St.* 14 *H.* 8. 5. for practiſing Phyſick within ſeven Miles of *London* without a Licence, he alledges Practice at *Weſtminſter*, and does not ſay that it was within ſeven Miles of *London*, it is bad. *R.* 4 *Mod.* 47.

If an Indictment be for taking Toll above the Rate appointed by a Statute, it muſt be averred that it was in a Market Town. 2 *Rol.* 248.

So, in all Caſes where any Circumſtances are required by the Purview of an Act to make it good, they ought to be averred: As, where the *St.* 1 *R.* 3. 1. makes a Feoffment, *&c.* by *Ceſtuy que Uſe* of full Age, *ſane*, and at large, *&c.* good; he, who pleads a Feoffment by *Ceſtuy que Uſe*, ought to aver that he was *ſane*, of full Age, and at large. *Pl. Com.* 376. *b.*

If a Man pleads a Licence by three Juſtices of the Peace at Seſſions to be a Jobber, *&c.* he ought to aver that he is an Houſholder, *&c.* which is requiſite by the *St.* 5 *El.* 12. in him, who takes ſuch Licence. *R. Sav.* 58.

So, if a Plaintiff declares upon an Agreement in Writing, which refers to a Caſe to be ſtated and ſigned by both Parties, he ought to ſhew the Caſe ſtated, and then aver that That and the Caſe in the Declaration are the ſame; for it is not ſufficient to ſay that he agreed in ſuch a Manner, and that both bound themſelves in *Pignoratione prædict'*. *R. Lut.* 489.

So, if a Condition be, that a Leſſee ſhall not ouſt the Tenants of a Manor, who do their Duty, it is not ſufficient to ſay that he ouſted *A.* a Tenant of the Manor, who did his Duty; but he ought to aver in Fact that *A.* was a Tenant and always did his Duty. *R.* 1 *Leo.* 246.

If a Promiſe be to ſave harmleſs for Beaſts delivered out of the Pound, he ought to aver that he delivered them, and it is not ſufficient to ſay that *A.* recovered againſt him *in Parco fracto pro Deliberatione*. *Skin.* 141.

So the Caſe ought to be averred agreeable to the Statute: As, if the *St.* 28 *El.* be pleaded, which enacts, that a Recuſant ſhall be convict, if he render not himſelf before the next Seſſions; if it be pleaded that he did not render himſelf *at* the next Seſſions, it will be bad. 3 *Lev.* 333.

So, in all Caſes where there is a Variance of the Deſcription of a Thing or Perſon, there ought to be an Averment that it is the ſame: As, in an Information for an Intruſion into Lands in *N. Dale*, if the Defendant pleads a Grant to him of Lands in *S. Dale*, he ought to aver that they are the ſame. *Sav.* 48.

If the Licence of Alienation be for a Rectory, and twenty Acres of Land, and the Fine be of a Meſſuage, and twenty Acres of Land, in Proceſs for alienating without Licence, it ought to be averred that the Meſſuage is Parcel of the Rectory. *Sav.* 14.

If in *Aſſumpſit* for 50 *l.* for Oaks ſold, the Defendant pleads a Contract for Oaks by Indenture, he ought to aver that they are the ſame Oaks. *Sav.* 17.

On a *Quo Warranto* for having a Park within the Metes and *Regard* of a Foreſt; if the Defendant preſcribes for a Park *infra Metas*, it is not ſufficient without averring that it was *infra Regard* of the Foreſt alſo. *Bridg.* 25.

So, if the Executor of *H. de B.* be ſued, and he pleads a Judgment againſt him as Executor of *H. de C.* he ought to aver that *H. de C.* is the ſame Perſon. *R. Sav.* 92.

If *A.* aſſumes to deliver to *B.* a Parcel of Gum, then upon the Sea, to be imported, being of the ſame Value as other Gum before delivered; it muſt be alledged, that it was the Gum on the Sea, *&c.* *R.* 2 *Cro.* 235.

So, if the Thing to be averred is repugnant in Words, but not in Truth, it ought to be explained before the Averment made: As, if a Grant be of Land in *A.* to an Information for Land in *B.* it cannot be averred to be the ſame Land, unleſs it be explained, that *A.* is a Vill in the Pariſh of *B.* or, is known by the Name of *B.* as well as *A.* and then it may be averred to be the ſame Land. *Sav.* 38.

(C. 77.) By what Words an Averment ſhall be. *Vide Ante,* (C. 67.) *Poſt,* (2 V. 2.)

An Averment need not be in expreſs Words, *Et A. in Facto dicit*; for *licet* is a ſufficient Word. *R.* 2 *Cro.* 383. *Pl. Com.* 125, 126. *R.* 3 *Leo.* 67.

Or, *pro eo quod. R.* 1 *Sand.* 117. *Semb.* 2 *Vent.* 278. *R.* 1 *Lev.* 194.

Et quia, &c. Co. Ent. 122. *b.* 1 *Lev.* 194.

Quod vendidit warrantizando is a ſufficient Averment that he warranted. *Sal.* 686.

Or, that he demanded *proferendo Satisfactionem* is a ſufficient Averment of a Tender. *R. Sal.* 686.

So any Words, which imply ſuch a Matter to be ſo, are ſufficient: As, if it be pleaded, that *A.* was ſeiſed, and that *obiit*, and the Land deſcended to *B.* as his Son and Heir, this is a ſufficient Averment that he died ſeiſed, tho' it be not ſaid *ſic inde ſeiſit' obiit*; for otherwiſe it could not deſcend to *B.* as his Heir. *R. Lut.* 1172.

So *preſentat' fuit*, that he did a Treſpaſs; tho' it be not expreſsly averred that he did it. *Semb.* 2 *Cro.* 582.

Quod ſcribi et ingroſſari fecit Indenturam, per quam mentionat' quod demiſit, &c. quam ſigillavit et deliberavit ut Fact' ſuum, Virtute cujus fuit poſſeſſionatus; tho' it be not expreſsly ſaid, *quod demiſit. R.* 2 *Jon.* 24.

[*Indentura fact.* between Leſſor and Leſſee, whereby Leſſee *convenit & agreavit* to pay the Rent, is a ſufficient Averment of a ſealing by him. *Atkinſon* v. *Coatſworth, P.* 8 *G. Str.* 512.]

That by the Cuſtom of London, they hold Pleas of Debt, ariſing within the City, and that he levied a Plaint according to the Cuſtom, is a ſufficient Averment, that the Debt, for which the Plaint was levied, aroſe within the City. *R. Vau.* 92.

That he paid a Debt of his Inteſtate, and took a Term in Satisfaction, imports, that he paid it with his own Money. *R.* 1 *Lev.* 154.

That by refuſing a Poll perdidit Officium, imports, that he had a Majority, if the Poll had been taken. *R.* 2 *Lev.* 50.

An Avowry by a Huſband ſeiſed in Right of his Wife, for Rent *aretro exiſten'*, is a ſufficient Averment of the Life of the Wife. *R. on a ſpecial Demurrer.* 2 *Lev.* 88. *Vide ante,* (C. 67.)

So, if a Covenant be to make a Surrender of a Copyhold, and he ſays, *quod ſurſum reddidit* to two Tenants according to the Cuſtom, it is ſufficient, without ſhewing the Cuſtom. *R.* 1 *Mod.* 61.

If a Matter be to be determined by the Groom Porter; an Averment, that he adjudged *in Caſu prædict'*, is ſufficient. *R. Lut.* 488.

In Debt againſt an Executor for 10*l.* which *injuſte detinet*; it is a ſufficient Averment that the Teſtator did not pay. 1 *Vent.* 136.

So, in Debt againſt *A.* on Articles, *that he or B. would pay,* for 10*l.* which *A. injuſte detinet*; *if B. ſealed,* it is a ſufficient Averment, that *B.* did not pay. *R.* 1 *Vent.* 136.

So, *quod A. ſeiſitus de Manerio unde prædict' Meſſuagium fuit Parcell' a Tempore cujus, &c.* levied a *Fine* is an Averment, that it was Parcel at the Time of the Fine. 1 *Leo.* 75.

That A. demiſed to B. who entred, and being poſſeſſed Revertione eidem A. ſpectan', &c. is a ſufficient Averment, that *A.* has the Reverſion. *R.* 1 *Sal.* 13.

If a Cuſtom be alledged for Tenants to erect Stalls in a Market, it is a ſufficient Averment, that the Market is within the Manor. *R.* 3 *Lev.* 190.

If Breach be, that the Defendant did not cover with Lead, according to the Rules preſcribed by the Statute for the Re-building of *London*; it is an Averment, that the Statute does require it. *R.* 2 *Lev.* 85.

That

That he entred, without ſaying, *by Night* or *by Day*, is ſufficient, if he ſays he entred lawfully. 2 *Mod. Ca.* 320.

[On an Agreement to ride *abſque flagello* vel *baculo*, vel *aliis armis*; *abſque flagello* et *baculo*, vel *aliis armis*, it is good. *Burgeſs* v. *Bracher*, *P.* 10 *G.* 2 *Ld. Raym.* 1366. *Str.* 594.]

(C. 78.) When an Averment is not neceſſary.

(C. 78.) Of Matter apparent to the Court.

But a Matter apparent to the Court need not be averred: As, if a Man ſhews that his Tenant aliened in Fee to a Dean and Chapter, and that he as Lord entred within a Year, he need not aver, that ſuch Alienation is *Mortmain*. *Pl. Com.* 81. *a.*

So, an Action on the *St.* 32 *H.* 8. 9. of Maintenance, it need not be averred, that the Thing bought was a pretenſed Right, *&c.* *Semb. Pl. Com.* 81.

[In Caſe, for falſely and maliciouſly ſuing out Commiſſion of Bankrupt againſt Plaintiff, it is not neceſſary to aver that Plaintiff never committed an Act of Bankruptcy. *Chapman* v. *Pickerſgill*, *M.* 3 *G.* 3. 2 *Wilſ.* 145.]

(C. 79.) An Averment of that which appears otherwiſe to the Court, does not avail.

And if a Man avers contrary to that, which appears to the Court, it is of no Avail, but ſhall be rejected: As, if a Man avers, that Land is appurtenant to a Meſſuage, which cannot be by Law. *R. Pl. Com.* 170. *b.*

If an Obligation be in 200*l.* Penalty, for the Payment of 104*l.* Plea, *That the Plaintiff releaſed the ſaid Obligation by the Name of an Obligation of* 200*l. for the Payment of* 100*l. and that no other Obligation was given*, is not good; for an Obligation for the Payment of 100*l.* cannot be an Obligation for the Payment of 104*l.* and the Averment that he releaſed *the ſaid* Obligation cannot avail. *R. Al.* 71.

If the King by Patent grants Lands in *A.* and *B.* and to an Information for an Intruſion into Lands in *C.* and *D.* this Grant is pleaded with an Averment, that they are the ſame Lands, it is bad; for it is impoſſible that Land in one Vill ſhould be the ſame with Land in another Vill. *R. Sav.* 38.

(C. 80.) Matter *ex abundanti*.

Nor Matter ſurmiſed *ex abundanti*: As, if the Plaintiff alledges a Condition ſubſequent to his Eſtate, he need not aver Performance; for the Allegation was, *ex abundanti*. *Pl. Com.* 30. *a.*

(C. 81.) Matter which comes properly from the other Side.

Nor Matter in Defeazance of the Action; for this will come more properly from the other Side: As, in Debt, on the *St.* 23 *H.* 6. 14. againſt Bailiffs, for not returning him a Burgeſs, there need not be an Averment that there is no Mayor, tho' the Statute ſays, that the Sheriff ſhall ſend his Precept to the Mayor, and if there be no Mayor, to the Bailiffs; for if there be a Mayor, it ſhall be ſhewn by the Defendants. *R. Hob.* 78.

In Treſpaſs *quare Canem, viz. a Bloodhound, cepit*, it need not be averred, that the Plaintiff can expend 40*s. per Ann.* 12 *H.* 8. 3.

If a Breach of Covenant be aſſigned in pulling down a Houſe, it need not be averred, that this was not a Houſe allowed to be pulled down. *R.* 1 *Leo.* 18.

If the Defendant in Treſpaſs juſtifies Entry by Proceſs on a *Homine Replegiando*, to do Execution, he need not ſay, that the Man to be replevied was not taken by the Command of the Chief Juſtice, *&c.* *Semb. Lut.* 1433, 4.

In falſe Impriſonment, it is ſufficient to ſay, that he took him by Force of a *Capias*, without ſaying how it was returned. *Cl. Com.* 16. *b.*

If a Man pleads a Fine, it is not neceſſary to ſhew, that the Perſon barred by *Nonclaim* was *ſane*, of full Age, *&c.* for this ſhall come from the other Side, not being put in the Purview of the Act, but as an Exception. *Pl. Com.* 376. *a.*

So, if he pleads, *that ſuch an one, being ſeiſed, made his Will*, he need not ſay, that he was of full Age, *&c.* *Pl. Com.* 376.

Or, *that Tenant in Tail demiſed*, he need not ſay, that he was of full Age, tho' this is requiſite to his making a Leaſe by the *St.* 32 *H.* 8. 28. 1 *Leo.* 76.

(C. 82.) Inducement.

Nor Matter, which is only Inducement: As, in an Action upon the Caſe for an Eſcape upon a *Capias Utlegatum*, in the Recital of the Outlawry in the Declaration, it need not be averred by *prout patet per Recordum*. *Lut.* 111. *R.* 5 *Mod.* 9, 10. And now is aided by the *St.* 4 & 5 *Ann.* 16.

Yet ſome Precedents do it. *Lut.* 111.

So, in Eſcape after a Commitment in Execution on a Judgment, it will be good without ſuch Averment. *R. on general Demurrer.* (*Sal.* 565.

(C. 83.) An immaterial Thing.

So a Deſcription, not material, need not be averred: As, if a Man makes Title by Preſcription to a Portion of Tithes, and that the Tithes came to the King, who granted them by the Name of all Tithes, Part of the *Demeſnes* of the Archbiſhop, &c. and in the Tenure of *B.* it need not be averred, that they were Part of the *Demeſnes*, or in the Tenure of *B.* for the Tithes are otherwiſe deſcribed and aſcertained, and whether it be true or falſe, the Grant will be good. *R. Dy.* 87. *b.*

(C. 84.) Concluſion of a Declaration.

A Declaration generally ought to conclude *ad Damnum* of the Plaintiff.

But, in an Action by a Prior and his Brethren, *ad Damnum ipſius Prior's*, is ſufficient. *Th. Dig. l.* 10. *c.* 25.

Or, *ad Damnum ipſorum*. *Th. Dig. l.* 10. *c.* 25.

So, in an Action by Huſband and Wife for Battery, &c. of the Wife, *ad Damnum ipſorum*, is good. *Th. Dig. l.* 10. *c.* 25. *Vide Poſt*, (2 A. 1.)

Yet, in Treſpaſs, *quod Clauſum fregit et Bona B. ibidem cepit ad Damn' ipſorum* is bad. *R.* 2 *Mod. Ca.* 370.

If, in the Concluſion of a Declaration, the Plaintiff claims more or leſs than his Due, it is bad, generally: As, in Debt on a Bond for forty Pounds, if the Declaration concludes his Demand for forty Marks, it is bad, if he does not ſhew how the Reſidue is diſcharged. *Per Cur.* 48 *Ed.* 3. 3. *a. Vide Poſt*, (2 W. 7.)

So, in Debt for Rent for one Year and a Half on a Leaſe, rendring 74*l. per Ann.* if he concludes his Demand for 100*l.* it is bad, without ſaying how the Reſidue is ſatisfied. *Semb.* 2 *Lev.* 4. *R. Cro. Car.* 137.

So, if the Plaintiff avows for 10*s. per Ann.* on a Leaſe, rendring 5*l. per Ann.* it is bad, without ſaying how the Reſidue is diſcharged. 20 *Ed.* 4. 2. *a. R. Cro. Car.* 104. *R. Hut.* 96.

So, in Debt for 6*l.* 14*s.* 2*d.* if the Plaintiff declares on ſeveral Contracts, the one for 3*l.* 10*s.* 6*d.* the other for 3*l.* 3*s.* 5*d.* and has a Verdict and Judgment for the Whole, it is Error; for the Judgment is for 3*d.* more than his Due. *R. Mo.* 298. *Cont. Cro. El.* 22. *R. Yel.* 5.

So, if the Plaintiff has Judgment for more Damages than are alledged in his Declaration, it is Error. *R.* 1 *Bul.* 49.

But, if it may be rejected as Surpluſage, it is good: As, in Debt for 10*l.* if the Plaintiff declares on a Contract for 10*l.* for a Horſe, and for 5*l.* for a Cow, and the Defendant pleads to the 10*l. Nil debet*, and a Verdict and Judgment be thereupon, it is good; for one Contract anſwers to the Plaint, and the other ſhall be rejected as Surpluſage. *R. Yel.* 5.

So, if it be only a Miſcaſting, it will not hurt: As, in an Action on the *St.* 2 *Ed.* 6. 13. for not ſetting out his Tithes, if the Plaintiff ſhews that the Tithes were of the Value of ſo much *per Acre in toto attingen' ad* 11*l. per quod Actio accrevit ad habend'*, for the treble Value 33*l.* where it is miſcaſt for 11*l.* 2*s.* and the treble Value 33*l.* 6*s.* it is good; for the Demand is not for a Sum certain, but ought to be given by the Jury. *R.* 2 *Cro.* 499.

So, in *Aſſumpſit* for 200 Weight of Prunes at 19*s. per Cent. in toto attingen' ad* 180*l.* where it ſhould be more, and the Jury gives 100*l.* Damages, ſuch Miſcaſting does not hurt. *R. cont. by all in C. B. and Exch.* 2 *Cro.* 247. *R. acc. Hob.* 88. *R. Hob.* 89. *R.* 2 *Cro.* 569.

So, in *Aſſumpſit*, where there are ſeveral Counts for ſeveral Sums *quæ attingunt ad* 52*l.* which is more than the Total of the Sums, this Miſcaſting does

not prejudice, if the Jury give leſs in Damages than the Total. *R. Lat.* 175. *R. Popb.* 209. *R.* 1 *Lev.* 58.

So, in Covenant, *Aſſumpſit*, *&c.* if the Plaintiff demands more or leſs than is due, it does not prejudice. *Semb.* 2 *Lev.* 57. *Vide Poſt*, (2 V. 2.)

So, in Debt for 100*l.* if the Plaintiff declares on particular Sums due, which exceed 100*l.* and the Defendant does not demur, but there is a Verdict for the Plaintiff; if he releaſes all above 100*l.* he ſhall have Judgment for 100*l.* *R.* 5 *Mod.* 214.

So, if the Declaration be, *ad Damnum* 40*l.* where the Writ was only 20*l.* if the Verdict finds leſs Damages than the Writ, it is good. *R.* 2 *Cro.* 629.

So, if it finds greater Damages, and the Plaintiff *remittit Damna*, for he ſhall not have more Damages than are in the Writ. *R.* 2 *Cro.* 128.

(C. 85.) When a Declaration ſhall be aided.

(C. 85.) By the Bar. *Vide Poſt*, (E. 37.)

Sometimes a Defect in a Count or Declaration ſhall be aided by the Defendant's Bar: As, if the Plaintiff, in *Aſſumpſit* to perform an Award, does not ſhew ſpecially Performance on his Part, and the Defendant does not demur, but pleads, *no ſuch Award*, he waives the other Matter, and cannot afterwards take Advantage of this Defect in the Declaration. *R. Cro. Car.* 385. *R. Lut.* 253.

So, if in an Action for an Eſcape by an Adminiſtrator *durante min' Ætate* of an Executor, it is not averred that the Executor is within the Age of ſeventeen Years, if the Defendant pleads a Removal by *Habeas Corpus*, which is the ſame Eſcape, he ſhall not take Exception to the Want of Averment; for he admits that the Plaintiff has Authority to ſue. *R. Lut.* 632.

So, in Debt for Rent, if the Plaintiff does not ſhew any Place, where the Leaſe was made, if the Defendant, by his Plea, admits the Leaſe, the Declaration is aided. *R. Hob.* 82. *R.* 2 *Cro.* 682. *R.* 2 *Rol.* 66. 2 *Cro.* 125.

So, in Covenant, if the Defendant pleads *Non eſt factum*, this aids a Breach badly aſſigned; for the Defendant admits the Breach, if it was his Deed. *R.* 2 *Cro.* 370.

So, in an Action for Rent, without ſaying how much is due, or on what Contract, if the Defendant pleads *Payment*, he cannot afterwards except to the Uncertainty of the Declaration. *R.* 2 *Cro.* 668.

So, in Debt on a Bond, if the Defendant demands *Oyer*, and pleads *Payment*. *R. Cro. Car.* 209.

So, in an Action for Words for ſaying, *You are foreſworn*, without ſaying in what Court, if the Defendant juſtifies, for that he took a falſe Oath at the Seſſions. *R. Cro. Car.* 288.

So, in Debt for an Eſcape on a Commitment in Execution, without ſaying *prout patet per Record'*, if the Defendant pleads a Licence from the Plaintiff; for he admits the Commitment. *R.* 3 *Lev.* 393.

So, in Treſpaſs, *quare Pullos cepit*, without an *Anglicè*, if the Defendant juſtifies, he aids the Uncertainty. *R. Lut.* 1492.

[In Treſpaſs *quare* 100 *cataractas, vocat.* Wears, *aut ſenſur. proſtravit*, if Defendant juſtifies in the Words of the Declaration; the Plea taking Notice that Wear and Fence are the ſame Thing, makes the Declaration good. *Luke* v. *Helmer*, *T.* 12 *G. Fort.* 377.]

In *Aſſumpſit*, to pay when he receives Money, without alledging the Time when, or from whom, it will be aided by the Plea of *Non Aſſumpſit*. *R.* 1 *Mod.* 169.

In an Action for diſturbing him in his Way, without ſhewing the Vill or County, where the Cloſe to which, *&c.* lies, if the Defendant pleads *Not guilty*, it is good; for then the Obſtruction only is material. *R. Noy* 9.

In Debt for Rent, where the Plaintiff does not ſhew where the Leaſe was made, if the Defendant pleads *Nil debet*. *R.* 2 *Cro.* 125.

So, if the Count wants Time, Place, or other Circumſtances, it may be aided by the Bar. *R.* 8 *Co.* 120. *b.* *Vide ſupra.*

As,

As, if the Count wants the Time or Place of the Adjudication, upon which it is founded, when it is confeſſed by the Bar. *R. Lut.* 487.

If a Bond be alledged in a Count, and it is not ſaid where it was made, and the Defendant pleads *per Dureſs apud B.* for he admits the Bond was made. *Dy.* 15. *a.*

[In *Quare Impedit*, if Declaration does not aver next turn to be Plaintiff's, yet it is helped by Defendants pleading over. *Biſhop of London* v. *Mercer's Company*, *H.* 5 *G.* 2. *Str.* 925.]

But, if the Count be defective in Subſtance, the Bar cannot make it good. *D.* 8 *Co.* 120. *b.*

As, in an Action for Words, *Thy Father*, *&c.* without ſaying the Plaintiff was preſent, or that the Speaking was to him; tho' the Defendant juſtifies, and thereby acknowledges the Words, this does not aid the Declaration. *R. Cro. El.* 416.

So, if an Avowry, which is in the Nature of a Count, ſhews a Grant of a Rent for Life out of an Eſtate for Years; tho' the Plaintiff in his Bar ſhews that the Grant was alſo out of a Freehold, it does not aid the Avowry. *R.* 7 *Co.* 25. *a.*

So, if the Defendant pleads, as to all, except a particular Part, *Not guilty*, and as to that Part juſtifies, Matter confeſſed by the Juſtification does not aid a Defect in the other Plea; for they are *quaſi* diſtinct Pleas. *R.* 2 *Cro.* 87.

(C. 86.) By the Writ.

So, a Defect in a Declaration may be aided by the Plaintiff's Writ; for in *C. B.* the Writ is Part of the Count; and therefore in Treſpaſs, if *Vi et Armis* be omitted in the Count, but mentioned in the Recital of the Writ, it is ſufficient. *R. Lut.* 1509. *Vide ante*, (C. 12.)

[In Battery, there was *quod cum* in the Declaration. *Per curiam*—(*diſſent. Forteſcue*) This is aided by the Writ; which is, *quare* he did the Treſpaſs. *Rogers* v. *Gibbs*, *P.* 3 *G.* 2. *Fort.* 376.]

[In Treſpaſs, Declaration for taking Dung and Soil (without ſaying of Plaintiff, is aided by Recital of the Writ, in which it appears it was Plaintiff's Dung and Soil; though there is no Original (if after Verdict.) *Franklyn* v. *Reeve*, *M.* 9 *G.* 2. *Str.* 1013. *Dubitante Hardwicke* C. J. for the Writ contains no Averment, but is interrogatory. *Et per Lee* C. J.—It has not been determined in *B. R.* that in Treſpaſs of Declaration *quod cum* is aided by the Writ. *Goodright* v. *Hodgſon*, *M.* 12 *G.* 2. *Andr.* 282.]

[*Quare cum* in Treſpaſs helped by the Recital of the Original after Verdict. *Barnes* 249.]

(C. 87.) By Verdict. *Vide Poſt*, (E. 38.)

So, if the Declaration omits that, which was neceſſary to be proved, otherwiſe the Plaintiff could not recover, this ſhall be aided by a Verdict for the Plaintiff: As, in *Aſſumpſit*, reciting that the Defendant had ſold to him all the Furzes growing upon ſuch Land to be taken before ſuch a Day, the Defendant, in Conſideration, *&c.* promiſed that the Plaintiff ſhould not be diſturbed in carrying them away: He does not ſay, that he was diſturbed *before ſuch Day*, yet this is aided by the Verdict. *R. Cro. Car.* 497.

So, in Debt for Rent by the Grantee of a Reverſion, if Attornment be not alledged, yet it is aided after Verdict; for if it was not proved, Plaintiff would have been *nonſuit*. *R. Ray.* 487. 2 *Jon.* 232.

So, the Want of a Place, where a Leaſe was made, is aided by Verdict. *R.* 2 *Rol.* 66. Where the Iſſue was upon a collateral Point, by which the Leaſe is admitted. *Vide ante*, (C. 85.)

So, in an Action upon the Caſe againſt a Sheriff, if the Plaintiff alledges, that the Sheriff *potuit arreſtare A.* againſt whom a Writ was delivered to him, tho' he does not ſay, that he was in his Preſence, *&c.* it ſhall be aided by Verdict. *R.* 2 *Jon.* 40.

[In Caſe againſt Officer for removing Goods taken in Execution before the Landlord is paid a Year's Rent, Want of alledging Notice of Rent due ſhall be aided by the Verdict. *Palgrave* v. *Windham*, *M.* 6 *G. Str.* 212.]

So

So an Allegation of a Right to elect for 200 Years and more is ſufficient after Verdict, tho' it is not ſaid, *from Time whereof, &c.* *R.* 2 *Jon.* 145.

If the Plaintiff declares on an *Aſſumpſit*, againſt an Executor, to pay 50*s.* when he receives Money, and avers that he received Money, without ſaying that he received 50*s.* it will be good after a Verdict for the Plaintiff. *R.* 1 *Mod.* 169.

In an Action upon the Caſe for not bringing Goods ſold to the common Beam, it ſhall be aided after Verdict, tho' he does not ſay that the Goods were ſold by Weight. *R. per* 3 *J.* 3 *Mod.* 162. *Carth.* 7.

In *Aſſumpſit*, in Conſideration that he aſſigned Goods, taken in Execution, to the Defendant, to pay the Plaintiff, *de et ex Bonis prædict'*, all his Intereſt and Coſts, tho' he does not aver, that the Defendant has raiſed the Money *de et ex Bonis*, it ſhall be aided after a Verdict for the Plaintiff. *R. Sho.* 308.

In *Reſcous* of Goods, without ſaying what Goods, it ſhall be aided by a Verdict, which finds two Horſes. *Ow.* 123.

In *Aſſumpſit* by an Indorſer againſt the Drawer, if the Declaration alledges, that *B.* paid the Money on the Part of the Plaintiff, without ſaying to whom, after a Verdict for the Plaintiff, it ſhall be intended that the Payment was to an Indorſee, and not to a Stranger. *R. Carth.* 130.

So, if an Ejectment be for Land in *A.* but by Deed it appears that the Land lies in *A. B.* if the Verdict finds a Demiſe of *Tenementa prædict'*, this aids the Declaration. *R. Yel.* 101.

In Waſte upon a Leaſe by Huſband and Wife, not ſaying by Deed, if it is neceſſary to be by Deed, it ſhall be aided, if the Verdict finds a Leaſe by them by Deed. *Sav.* 111.

So, in Debt for Rent for three Years on a Demiſe for a Year *et ſic de Anno in Annum*, without ſaying that he continued in Poſſeſſion for three Years, for, after a Verdict, it muſt be intended. *R.* 1 *Sid.* 423.

So, in *Aſſumpſit* by an Executor, if the Plaintiff does not aver, *No Payment to the Teſtator, &c.* it ſhall be aided. *R.* 1 *Vent.* 119. *R. Hard.* 221.

Or, on an *Aſſumpſit* by *A.* and *B.* where the Action is brought againſt *A.* the Survivor, if the Plaintiff does not aver, that *B.* did not pay. *Per Hale. Hard.* 221.

So, in *Trover* againſt Huſband and Wife, alledging a Converſion *ad Uſum ipſorum*, if the Verdict finds the Wife not guilty, this aids the Declaration. *R. Mar. pl.* 134.

So, in an Action for Words by both. *R.* 1 *Rol.* 781. *l.* 50.

So, in *Aſſumpſit* to pay the Coſts in ſuch a Suit, if the Plaintiff does not ſhew how much Coſts, it is aided after Verdict. *R. Cro. El.* 276.

So, in Covenant by an Executor for Rent in the *Detinet*, if he does not ſhew whether due before or ſince the Death of the Teſtator, it ſhall be aided after Verdict; for being in the *Detinet*, it ſhall be intended before his Death. *R.* 1 *Sid.* 376.

In *Aſſumpſit* to pay, if the Plaintiff drains Land *ita quod*, it be dry *aliquo Tempore* between ſuch Feaſts, if the Plaintiff alledges that it was dry *aliquo Tempore*, whereas it ſhould be *toto Tempore*, it ſhall be aided after Verdict for the Plaintiff. *Semb.* 2 *Rol.* 246. *l.* 30.

So, in Aſſault and Battery by the Huſband and Wife for a Battery of both, it will be aided, if the Verdict finds the Defendant guilty only of a Battery of the Wife. *R.* 2 *Mod.* 66. 2 *Lev.* 101. *Vide Action*, (G.)

So, in Treſpaſs by them for a Battery of the Wife and taking the Goods of the Huſband, if the Defendant be found not guilty as to the Goods. *Dub.* 1 *Lev.* 3. *Per* 2 *J.* but 2 *J. cont. Pal.* 339.

In *Aſſumpſit* for Money received by the Defendant for the Plaintiff *to the Uſe of the Defendant*, after Verdict it will be good; for the Words, *to the Uſe of the Defendant*, being repugnant, and inſenſible, ſhall be rejected. *R.* 1 *Sal.* 24.

So falſe *Latin* will be aided by Verdict, 2 *Mod. Ca.* 380.

So, if the Declaration ſhews a Title imperfectly, it may be aided by Verdict: As, if the Plaintiff ſays that he is *Tenens Cuſtom' qui tenet Tenementa, &c. Par-*

cell' Manerii per Cop' Rotulor', without saying, *ad Voluntatem Domini*; it shall be intended after Verdict that he was a Copyholder. *R.* 1 *Sal.* 365.

[If the Crown in *Quare Impedit* does not alledge Presentation, it is cured by Verdict. *Rex* v. *Bishop of Landaff*, *H.* 8 *G.* 2. *Str.* 1006.]

[So in an Action of Debt in a Manor-Court of an Amerciament, if the Declaration does not shew, that Defendant was resiant at the Time of the Amerciament set, it is aided by Verdict. *Wicker* v. *Norris*, *P.* 8 *G.* 2. *B. R. H.* 116.]

[If Defendant makes Defence on a Writ of Inquiry, he cannot afterwards take advantage of Mistake in the Declaration. *Freeland* v. *Hunt*, *P.* 8 *G.* 3. 2 *Wils.* 380.]

[Although Declaration begins *whereas*, and nothing is averred, and would be bad on special Demurrer, yet the Conclusion, *by reason whereof*, is an Averment, and after Verdict the Defect is aided. *Barnes* 452.]

[In Action on 9 *Ann. c.* 14. if the Parish where the Offence is committed is not specified, it is cured by Verdict that Defendant owes to the Poor of the Parish of *A. Frederick* v. *Lookup*, *H.* 7. *G* 3. 4 *B. M.* 2018.]

But, if the Verdict falsifies the Declaration, the Plaintiff shall not have Judgment: As, in Conspiracy if he finds all, but one, *not guilty*. 1 *Sand.* 230.

So, if the Declaration does not contain a Cause of Action, it shall not be aided: As, in *Assumpsit*, if the Promise alledged does not appear to be made upon good Consideration, it shall not be aided by Verdict. *R.* 1 *Sal.* 364.

[In *Assumpsit*, a Consideration shall not be presumed after a Verdict, if it appears on the Face of the Declaration to be illegal. *Stotesbury* v. *Smith*, *H.* 33 *G.* 2. 2 *B. M.* 924.]

When a Defect in a Declaration shall be amended. *Vide Amendment*, (L. 1, 2.)

How it shall be amended. *Vide ante*, (C. 6.)

(D) Imparlance.

(D. 1.) What it is.

IMPARLANCE is, when the Court gives Leave to a Party to answer at another Time, without the Assent of the other Party.

Imparlance is General or Special.

Special Imparlance is, where the Party imparls, *salvis sibi omnimod' advantag'*.

General, is where the Party imparls generally without Exception.

And in *C. B.* it shall be at the Return-Day.

In *B. R.* at a Day certain, *viz.* the Day of Appearance after the Return.

The Defendant may pray an Imparlance to plead to the Declaration.

So the Plaintiff to reply.

So to rejoin, sur-rejoin, *&c.*

Imparlance may be to another Time in the same Term.

Or, to the next Term.

But it cannot be omitting a Term; as, from *Hilary* to *Trinity* Term. *R.* 2 *Rol.* 442.

[In *B. R.* on a Declaration of *Hilary*, there may be an Imparlance to *Trinity* Term; for it is the Course of that Court, to give Imparlance on Declaration till the Day of Pleading. *Fletcher* v. *Richarson*, *M.* 10 *G.* 2. *B. R. H.* 322.]

In Personal Actions, if the Defendant does not appear at the Day given by the Imparlance, there shall be final Judgment against him; for no Process lies to bring him into Court. *Mod. Ca.* 5.

Tho' the Imparlance be prayed upon a Plea in Abatement. *Ibid.*

Tho' it be prayed by the Plaintiff. *Ibid.*

Tho' the Imparlance be to another Term, or to another Day in the same Term. *Mod. Ca.* 8.

[Time to plead is the same as an Imparlance. *Barnes* 345.]

(D. 2.) When it ſhall be given.

In all Real Actions the Defendant ſhall have an Imparlance of Courſe. *C. Att.* 294.

So in all Actions in *B. R.* where the Defendant is taken on a *Latitat*; for the Cauſe of Action does not appear by the Writ. *Vide C. Att.* 38.)

So, if he appears on a Special Original, or Summons, as a Member of Parliament. 2 *Mod. Ca.* 228.

So in *C. B.* if the Defendant be taken on a *Clauſum fregit*, and the Plaintiff declares thereon ſpecially, the Defendant may plead in the ſame Term, or have an Imparlance. (*Vide C. Att.* 294.)

So in Ejectment and Perſonal Actions in *C. B.* or by Original in *B. R.* in *London* or *Middleſex*, if the Defendant appears *Cras' Aſcens'*, or the laſt Return of any other Term, he ſhall have an Imparlance of Courſe. (*Vide C. Att.* 295, 347.)

So, where the Action lies in any other County, if the Defendant appears *Cras' Mart'* or *Mens' Paſchæ*, or afterwards, or after the firſt Return in any other Term. (*Vide C. Att.* 295, 347.)

[It ſhall be granted, though Writ returnable on firſt Return, if Declaration was not delivered with Notice to plead. *Barnes* 225.]

So, if the Defendant appears the firſt Term, but does not give a Rule to declare, he ſhall be compelled the ſecond Term to accept of a Declaration with an Imparlance. *C. Att.* 294, 346.

So ſince the *St.* 4 & 5 *W. & M.* 21. On a Declaration delivered to the Defendant in Cuſtody before *Mens' Pas'*, or *Cras' Animar'* in Actions not brought in *London*, *Middleſex*, or within forty Miles Diſtance, if the Defendant enters his Appearance within ten Days after *Eaſter* or *Mich.* Term, he ſhall have an Imparlance till the next Term. (*Vide Rules and Orders B. R.* 58, 85. *Mills* 114.)

So, where the Action is in any County, if the Declaration be delivered upon or after *Mens' Pas'* or *Cras' Animar'*, or at any Time in *Hilary* or *Trinity* Term, and the Defendant enters his Appearance two Days before the Eſſoin-Day of the next Term. *Vide Rules and Orders B. R.* 58, 85. *Mills* 115.)

So, if the Plaintiff declares, and does not demand a Plea within three Terms, the Defendant ſhall have an Imparlance of Courſe. 2 *Rol*, 46.

[If Notice of Declaration is ſerved on *Sunday*, Imparlance ſhall be granted. *Barnes* 309.]

[If Defendant is Lunatic, there be Imparlance. *Barnes* 225.]

[In Action for Words, Defendant ſhall have Imparlance, on Affidavit of Plaintiff's being under Proſecution for the Offence. *Barnes* 224.]

[On an Amendment, Defendant ſhall have an Imparlance or Coſts, at his Election. *Lechill* v. *Reynell*, *T.* 6 *G.* 2. *Str.* 950.]

[If Plaintiff has a Rule to file Bill to warrant Proceedings, he may enter Imparlance on Roll; but if not entered in Time, he pays Coſts. *Barnes* 227.]

(D. 3.) When not.

But, if the Appearance in Actions by Original in *London* or *Middleſex* be before the laſt Return of the Term, or in any other County before *Cras' Mart'* or *Mens' Pas'*, or upon the firſt Return of *Trinity* or *Hilary* Term, the Defendant ſhall not have an Imparlance without Conſent or Special Rule, but upon a Rule given he ought to plead the ſame Term, or within fourteen Days after the Term. (*Vide C. Att.* 294, 295.)

So, in *B. R.* if a Declaration in *London* or *Middleſex* be delivered before *Mens' Pas'* or *Cras' Animar'*, the Defendant ſhall plead the ſame Term without Imparlance. *By Rule in B. R.* 5 *An.* (*Vide Rules and Orders B. R.* 72, 73.)

If a Declaration be againſt an Attorney, or Officer of the Court, he ſhall plead without an Imparlance, if there are four Days within the Term after the Bill is filed. *Sol.* 517.

[On Proceſs returnable the firſt, ſecond or third Return of any Term, if Declaration is delivered within four Days before the End of the Term, Defendant ſhall plead without Imparlance. *General Rule, C. B. T.* 8 *G.* 3. 2 *Wilſ.* 381.]

So, he ſhall plead in the ſame Manner, when the Appearance upon Proceſs is voluntary, as if he was arreſted upon Proceſs. *Sal.* 518.

So, if he in Reverſion be received on the Default of Tenant for Life, he ſhall not have an Imparlance; for the Plaintiff is delayed by the Receit. *Mo.* 34.

So, in an Action by or againſt an Attorney of the Court, the Defendant ſhall not have an Imparlance. *Pr. R.* 180.

Nor where the Defendant comes in upon an Outlawry, and the Plaintiff declares againſt him. *Pr. Reg.* 180.

So, for Cauſe, the Court may force the Defendant to plead the ſame Term without an Imparlance: As, in an Action againſt an Executor, who would confeſs the Actions of others to defeat the Plaintiff. *R.* 1 *Bul.* 122.

So, in Aſſize, no Imparlance ſhall be given without ſpecial Cauſe. 1 *Sal.* 83.

The Defendant ſhall not be allowed an Imparlance, or a Motion to amend his Plea, or change the Venue, before his Appearance is entred with the proper Filazer. *By Rule Paſ.* 24. *Car.* 2.

[If *Habeas Corpus* removes a Cauſe from Sheriff's Court to *B. R. Nov.* 6. and Declaration is delivered *Nov.* 12. and Rule to plead given, the Court will not grant Imparlance. *Wood* v. *Wenman*, *M.* 20 *G.* 2. 1 *Wilſ.* 154.]

[Not in real Actions. *Barnes* 2.]

[Not after a peremptory Rule to plead. *Barnes* 225.]

[Nor if Notice to plead has been ſerved, tho' not indorſed on the Declaration. *Barnes* 226, 227.]

When Plea may be after Imparlance or not. *Vide Abatement*, (I. 19, 20.)

(E) Plea.

A Plea ſhall be in Abatement, or in Bar.

As to Pleas in Abatement. *Vide Abatement per tot'.*

As to Pleas to a Bill in Equity. *Vide Chancery*, (I. 1.)

(E. 1.) Muſt anſwer the whole Declaration.

Vide Poſt, (F. 4.)—(Q. 3.)—(W. 2)

A Plea in Bar muſt be conformable to the Count. *Co. Lit.* 303. *a.*

And therefore, if the Plea does not anſwer to every Part of the Declaration, it is a Diſcontinuance for the Whole: As, in Treſpaſs for cutting down 300 Trees, if the Defendant pleads, *quoad* all but the Entry and cutting down 20 Trees, *not guilty*, and *quoad* the Entry juſtifies, but ſays Nothing to the Cutting down of the 20 Trees, this is a Diſcontinuance for the Whole. *R.* 4 *Co.* 62. *a.*

So, in Trover for 300 Sheep, if the Defendant juſtifies *quoad* 296, but ſays Nothing as to the remaining Four, it is a Diſcontinuance for the Whole. *R. Cro. El.* 434. *Vide* 2 *Mod.* 259.

So, in Treſpaſs with Horſes and Sheep, if he juſtifies only with Horſes. *R. Mar. pl.* 47. *R.* 2 *Cro.* 27.

So, in Covenant to provide 200 Men and pay ſo much for every One, if the Plaintiff aſſigns a Breach in both Points, and the Defendant pleads only as to the Providing of Men, and ſays Nothing to the Nonpayment. *R.* 1 *Lev.* 16.

So, in Debt on a Bond to perform an Award, if the Defendant pleads Performance only of Part, it is bad. *R.* 3 *Lev.* 24. *Vide* in *Arbitrament*, (I. 4.)

In Account as Bailiff of his Houſe and Goods, if he pleads only as to the Goods. *R.* 2 *Leo.* 195.

In Treſpaſs for breaking his Cloſe and deſtroying his Hop-poles, if the Defendant pleads *his Freehold*, and he took the Hops, *Damage feaſant*, it is bad; for this does not anſwer to the Deſtruction of the Poles. *R.* 2 *Mod. Ca.* 330.

So, in Treſpaſs for a Battery and Wounding, if the Defendant juſtifies the Putting of him into the Stocks, and ſays Nothing more, it is bad; for that Matter does not go to the Wounding. *R. Cro. El.* 268.

So,

So, in Treſpaſs for an Aſſault and Battery, if the Defendant, as to the *Vi et Armis*, pleads *Not guilty*, and *quoad Reſidu' Tranſgreſſionis* juſtifies by the taking his Hat off his Head in a Church, it is bad; for this does not go the Battery. *Semb. but Cur. cont.* 1 *Sand.* 14. *R.* 2 *Vent.* 193.

So, in Treſpaſs for an Aſſault and Impriſonment, if to all, *præter* the Aſſault and Impriſonment, the Defendant pleads *Not guilty*, and *quoad* the Impriſonment juſtifies, without ſaying any Thing to the Aſſault, it will be bad, tho' there cannot be an Impriſonment without an Aſſault. *R.* 1 *Rol.* 176, 7.

In Treſpaſs for entring a Cloſe and taking Timber, if the Defendant makes a Title to the Cloſe without anſwering to the Timber. *R.* 1 *Rol.* 406.

In Treſpaſs for driving away his Cow, if the Defendant juſtifies the Taking of Plaintiff's Heifer; for they are different. *R. Lut.* 1355.

So, in Treſpaſs with a *Continuando a* 1 *Die M. ad* 25 *Jul.* if the Defendant juſtifies except *a* 1 *Die M. ad.* 20 *Jul.* *R.* 2 *Cro.* 27.

So the Defendant ought to alledge the Matter of his Plea in the ſame Place that the Declaration mentions if the Juſtification is not local. *Vide Action*, (N. 12.)

[If the Plea begins. And *the ſaid A. B.* who is ſued by the Name of *C. D.* it is bad, for *A. B.* is not named in the Declaration: it ſhould alſo ſay by whom he is ſued. *Jackſon* v. *Ford.* *P.* 13 *G.* 3. 3 *Wilſ.* 413.]

But if he anſwers in Senſe, tho' not in Words, it is ſufficient: As, if a Bond be to perform all Covenants, Agreements, Articles, *&c.* and the Defendant pleads that he has performed all Covenants and Agreements, it is good; tho' he omits *(Articles)*; for *(Agreements)* is *tantamount*. *R. Cro. El.* 255.

So, in Treſpaſs for an Impriſonment till he paid ſo much, if the Defendant juſtifies the Impriſonment, it is ſufficient, without anſwering to the taking ſo much, which is only Aggravation. *R.* 1 *Sal.* 408. *Ray.* 469.

Or, for an Aſſault, Battery and Menacing, if he juſtifies the Aſſault without anſwering to the Menaces, which is Aggravation. *R. Mo.* 705.

So, in Treſpaſs for an Aſſault, Battery and Impriſonment, if he juſtifies the Treſpaſs and Impriſonment, it is ſufficient. *R.* 1 *Lev.* 31.

Or pleads *quoad* the Reſidue of the Treſpaſs and Impriſonment; for *Treſpaſs* goes to the Whole. *R.* 3 *Lev.* 404.

So in Treſpaſs *quare Clauſum fregit et Januas rupit et Clauſum intravit*, if he pleads to all but the Breaking *Not guilty*, and then juſtifies his Entry by Proceſs, *&c.* it is ſufficient; for the Entry is a Breaking in Law. *Semb. Lut.* 1433. *R. Lat.* 188.

So, in Treſpaſs *quare Clauſum fregit* and ſo many Cart Loads of Timber *cepit*, if he makes Title to the Cloſe, and ſhews the Timber to be Trees growing, it is ſufficient. *R.* 1 *Rol.* 406.

But by the *St.* 32 *H.* 8. 30. After Verdict a Diſcontinuance ſhall be amended. *R.* 2 *Rol.* 161. *R.* 4 *Mod.* 246. And ſo it was by Conſent. 4 *Co.* 62. *a.* *Vide Amendment*, (I.)

Yet it ſhall not be amended, or aided, on a general Demurrer. *Semb. Yel.* 65. 1 *Sand.* 338, 9.

If the Plea begins by anſwering only to Part, the Plaintiff ought to take Judgment by *Nil dicit*, to avoid a Diſcontinuance. 1 *Sal.* 179, 180.

If it begins as an Anſwer to the Whole, but anſwers only to Part, it will be bad on Demurrer. *R.* 1 *Sal.* 179.

(E. 2.) And muſt not be double.

So, if a Plea contains Duplicity, and alledges ſeveral diſtinct Matters (which require ſeveral Anſwers) to the ſame Thing, it is bad. *Co. Lit.* 303. *a.* 304. *a.* *Hob.* 295. *Vide Ante*, (C. 33.) *Poſt*, (F. 16.)

As, if an Avowant alledges Seiſin of Services in his Grandfather, and alſo in himſelf, it is double; for either is traverſable, and one had been ſufficient. *Pl. Com.* 140. *a.*

So, if a Man alledges two continual Claims, one by his Anceſtor, and the other by himſelf. *Ibid.*

Or two Deſcents in Fee. *Ibid.*

So, if a Man pleads a Patent, as a Grant and alſo as a Confirmation, it is double. *R. on Demurrer.* 1 *Sid.* 176.

So, in Debt for Rent, if the Defendant pleads that it was a navigable River, and that the Plaintiff had no Right to demiſe the Toll of it, it is double. *R. by* 3 *J. Vent. cont.* for one is a Conſequent of the other. 2 *Vent.* 68.

Nil debet to Part, and *Nil habet in Tenementis* to other Part; for *Nil debet* admits the Demiſe. *R.* 4 *Mod.* 254. *R.* 1 *Sal.* 218.

So, if the Defendant pleads Matter in Law, and alſo Matter in Fact: As, if he ſays that *S.* lies within the *Cinque Ports*, where *Breve Domini Regis non currit* and does not lie *in Com. Cant'*. *R. Yel.* 13.

If he pleads ſeveral Outlawries in Diſability of the Plaintiff; for one is ſufficient. *R. Carth.* 9.

So, if he pleads *Not guilty* to Part, and juſtifies for the ſame Part. *R.* 1 *Rol.* 49.

So, if he pleads ſeveral Matters together, tho' one be in Bar and the other in Abatement. *D.* 1 *Sid.* 176.

And a double Plea is bad, tho' one Matter or the other be not well pleaded: As, in Treſpaſs, if the Defendant pleads *Molliter Manus impoſuit* and a Releaſe, it is double, tho' the Releaſe is not well pleaded. *R.* 1 *Sid.* 176.

Tho' but one of the ſeveral Matters pleaded be material. *Per Dod. Poph.* 186.

But it is not double, where one Matter alledged is a Conſequence of the other: As, if the Defendant pleads *Plene adminiſtravit* and ſo Nothing in his Hands. *Pl. Com.* 140. *a.*

Or, is pleaded only as Inducement to the other. *Per Holt, H.* 10 *W.* 3. *Poph.* 186.

As, in *Detinue* by a Woman, if the Defendant pleads, that ſhe took Husband who releaſed; for he cannot plead the Releaſe of the Husband without ſhewing that the Plaintiff married him. *R. Mo.* 25. *Dal.* 30.

In Debt on a Bond to deliver Hops which the Plaintiff was to chuſe, if the Defendant pleads that he was ready, but the Plaintiff did not chuſe, it is not double. *Semb. Mar. pl.* 113.

So, it is not double, if one Anſwer is ſufficient for the ſeveral Matters; As, if the Defendant alledges two Deſcents in Tail; for the Gift is the Subſtance, and *ne dona pas* is an Anſwer to the Whole. *Pl. Com.* 140. *a.*

In Treſpaſs for an Aſſault, Battery and Impriſonment till he paid 7 *l.* Fine, if the Defendant pleads *Not guilty* for all but the Aſſault and Impriſonment, and then juſtifies by Proceſs for 7 *l.* it is not double, for the Taking of the 7 *l.* is not within the *Not guilty*. *R. Jon.* 367.

So, it is not double where a Matter is added only for the Maintenance of the Count or Bar: As, in *Quare Impedit*, if the Ordinary pleads, that he preſented on a Lapſe, and the Plaintiff replies, that he preſented before a Lapſe, and the Ordinary refuſed, and afterwards preſented his Clerk on Pretence of a Lapſe; for that Matter, that the Ordinary preſented on Pretence of a Lapſe, is alledged only to maintain the Diſturbance mentioned in the Count. *Hob.* 198.

So, it is not double, if one Matter cannot well be pleaded without the other, and he relies upon one: As, if two Statutes are pleaded for the Repeal of a former Law, if the one has Reference to the other. *Semb.* 1 *Rol.* 88, 89.

So, if a Man pleads a Feoffment with Warranty, and relies only on the Warranty. *Per Berkley. Mar. pl.* 84.

If the Defendant pleads ſeveral Matters, and concludes *et ſic non eſt Factum. Kit.* 223. *b.* 224. *a.*

If the Defendant pleads, that the Principal rendred himſelf and died, and relies on the Death. *R. Jon.* 139.

If he pleads, *Nient alien Artificer*, and relies upon his being born within the King's Ligeance. *R.* 1 *Sid.* 357.

In *Detinue*, if the Defendant pleads that the Plaintiff married after Bailment, and the Husband releaſed to him. *R. Mo.* 25.

But the Defendant may plead one Matter to Part, and another Matter in Bar to other Part. *Co. Lit.* 304. *a.*

As,

As, in Dower, the Tenant may plead Joint-tenancy to Part, and Detinue of Charters to the Reſidue, tho' this goes to the Whole. *Kit.* 223. *b.*

In Aſſize, a Fine as to a Moiety, and a Releaſe of the Father with Warranty as to the other Moiety. *Ibid.*

In Treſpaſs for an Aſſault, Battery and Wounding, the Defendant may plead *Not guilty* to the Wounding, and juſtify the Aſſault and Battery. *Mar. pl.* 106.

So, in Treſpaſs for breaking his Houſe, &c. the Defendant may plead as to all the Treſpaſs *præter* three Poſts *Not guilty*, and as to the Breaking the three Poſts the Defendant may juſtify; for tho' he pleads *Not guilty* to All the Treſpaſs in the Houſe, yet it is with an Exception of the three Poſts. *R. Cro. El.* 87.

And one Tenant or Defendant may plead a Matter, which goes in Bar to the Whole, and the other Tenant or Defendant may plead another Matter in Bar to the Whole. *Co. Lit.* 303. *a.*

So, if a Plea is double, and the Plaintiff by his Replication anſwers only to one Matter and takes Iſſue upon it, which is found, this aids the Duplicity of the Plea. *Kit.* 238. *a.* *Vide* when a Bar is aided by the Replication, *Poſt*, (E. 37.)

And a double Plea ſhall be aided upon a general Demurrer. *R.* 1 *Sand.* 337. *R.* 2 *Rol.* 306. *Semb.* 1 *Rol.* 112. *Vide* when an unneceſſary Traverſe, which makes the Plea double, ſhall be aided on a general Demurrer. *Poſt*, (G. 22.)

And therefore there was a ſpecial Demurrer to it. *Cro. Car.* 61. 2 *Vent.* 68. *Mar. pl.* 113.

So, if an Aſſignment of Errors be double, there ought to be a ſpecial Demurrer; for a general Demurrer is not ſufficient. *R.* 1 *Lev.* 76.

And by the *St.* 4 & 5 *Ann.* 16. The Tenant or Defendant in any Action, or Plaintiff in Replevin, in any Court of Record may, with Leave of the Court, plead as many ſeveral Matters as he ſhall think fit. But if any ſuch Matter ſhall be judged inſufficient, Coſts ſhall be given at the Diſcretion of the Court. So, if on an Iſſue in any ſuch Matter Verdict be for the Plaintiff or Demandant, Coſts ſhall be given, unleſs the Judge certifies he had a probable Cauſe to plead it.

[Leave to plead ſeveral Matters muſt be given in Court, not at Judge's Chambers. *Barnes* 357.]

[Defendant may plead three Pleas. *Verney* v. *Fox*, *T.* 5 *G.* 2. *Fort.* 337.]

[If Defendant plead double it muſt be at one and the ſame Time. *Hall* v. *Tullie*, *P.* 8 *G.* *Fort.* 336.]

[Defendant may have Leave to add a Plea after two Terms ſince Pleas pleaded; for there is no Time limited. *Waters* v. *Bovell*, *T.* 21 & 22 *G.* 2. 1 *Wilſ.* 223.]

[On Motion to plead double, the Court will not take into Conſideration whether it be a good Plea or not. *Ward* v. *The Charitable Corporation*, *T.* 8 *G.* 2. *B. R. H.* 126.]

[The Court will, on Circumſtances, give Leave to withdraw a Plea, and plead another, (as on a Bond to withdraw *non eſt Factum*, and plead the Statute of Gaming) on Payment of Coſts, taking ſhort Notice of Trial, and giving Judgment of the ſame Term, if Verdict for Plaintiff. *Jeffereys* v. *Walter*, *M.* 21 *G.* 2. 1 *Wilſ.* 177. *Nichols* v. *Sutcliffe*, *T.* 7 *G.* 2. *B. R. H.* 56.]

[So on falſe Impriſonment, Defendant having pleaded General Iſſue, may plead a Juſtification, and the General Iſſue, on Terms. *Taylor* v. *Joddrell*, *M.* 23 *G.* 2. 1 *Wilſ.* 254.]

[And if in Parliament, on waiving Privilege. *Wilkes* v. *Wood*, *Wilkes* v. *Webb*, *M.* 4 *G.* 3. 2 *Wilſ.* 204.]

[The Court will, on Circumſtances, give Leave, after General Iſſue pleaded, to plead a ſpecial Plea, which brings it on upon the Merits; but not a Plea that excludes the Merits, as the Statute of Limitations. *Cox* v. *Rolt*, *M.* 5 *G.* 3. 2 *Wilſ.* 253.]

[Defendant may move to plead double, after Rule to plead is out, and before Judgment. *Barnes* 329.]

[After Rule to plead is out, Defendant cannot have Leave to plead Performance on a Bond, and alſo *ſuch* Adminiſtration not granted to Plaintiff, for that cannot

cannot be pleaded without craving *Oyer*, which cannot be craved after the Rule to plead is out. *Garrard* v. *Early*, *T.* 9 *G.* 3. 2 *Wilſ.* 413.]

[Defendant may plead double, after Order to plead iſſuable Plea. *Barnes* 338.]

[If Defendant pleads the General Iſſue, Plaintiff demurs, and Defendant joins, the Court may give Leave to withdraw his Plea, and plead double. *Meard* v. *Philips*, *T.* 5 *G.* 2. *Str.* 906.]

[Defendant in *qui tam* cannot plead double. *Morgan* v. *Lookup*, *T.* 9 *G.* 2. *Str.* 1044. *B. R. H.* 262. *Law* v. *Crowther*, *P.* 28 *G.* 2. 2 *Wilſ.* 21.]

[So Action on 9 *Ann.* for Money won at Play, is not within 4 *Ann.* ſo two Pleas cannot be pleaded. *Barnes* 365.]

[If Defendant pleads ſeveral Pleas, without ſaying *by Leave of the Court*, it is only Irregularity, but is good on ſpecial Demurrer; and any Duplicity of Plea muſt be pointed out by the Demurrer. *Ryley* v. *Parkhurſt*, *T.* 21 & 22 *G.* 2. 1 *Wilſ.* 219.]

[Defendant muſt ſhew that all the Pleas pleaded were by Leave of the Court; therefore, if in Treſpaſs he pleads *Not guilty*, and then, "by Leave, *&c.*" according to the Statute juſtifies, and concludes with Averment, and then as to the ſecond Count juſtifies again; it does not appear that this ſecond Juſtification was by Leave of the Court, and it will be bad on Demurrer. *Bartholomew* v. *Ireland*, *H.* 11 *G.* 2. *Andr.* 108.]

[Rule *Niſi* to plead double ſhall be diſcharged, if Defendant has not appeared. *Barnes* 331.]

[*Non Aſſumpſit*, and *ne unq. exec.* allowed without Affidavit. *Haggard* v. *Collington*, *T.* 2 *G.* 2. *Fort.* 336.]

[*Non Aſſumpſit* and a Recovery and Execution executed as to Part of the Debt, allowed. *Levat* v. *Reſhere*, *M.* 4 *G.* *Fort.* 337.]

[In *Indeb. Aſſumpſit*, *Non Aſſumpſit* and *Plene Adminiſtravit* allowed, on Affidavit. *Ld. Briſtol*, *M.* 1724. *Bunb.* 182.]

[*Non Aſſumpſit*, and *Non Aſſumpſit infra ſex annos*, allowed. *Harriſon* v. *Winchcombe*, *H.* 12 *G.* *Folkes* v. *Smith*, *in C. B. M.* 12 *G.* *Briſtow* v. *Woodward*. *Toephen* v. *Elking*, *M.* 13 *G.* *Str.* 678. Allowed on ſolemn Debate; becauſe hereby Defendant ſecures to himſelf a Trial on the Merits at all Events. *Da Coſta* v. *Carteret*, *H.* 4 *G.* 2. *Str.* 889.]

[*Non Aſſumpſit* and Diſcharge by Bankruptcy, allowed. *Philips* v. *Wood*, *M.* 8 *G.* 2. *Str.* 1000.]

[To *Aſſumpſit*, Teſtator made no ſuch Promiſe, Cauſe of Action not within ſix Years, Executor made no Promiſe, and *plene Adminiſtravit*. *Hughes* v. *Pigot*, *P.* 9 *G.* 2. *B. R. H.* 243.]

[In Treſpaſs for cutting down Plaintiff's Tree, that he cut it down for Repairs, and that it interrupted his Water-courſe, allowed. *Clare* v. *Froſt*, *P.* 7 *G.* *Str.* 425.]

[On Debt on Bond againſt an Adminiſtrator, *ſolvit ad Diem* and *plene Adminiſtravit* allowed, on Affidavit of the *plene Adminiſtravit*. *Jones* v. *Lord Strafford*, *M.* 1724. *Bunb.* 181.]

[To Debt on Bond, Executor may plead Payment of Principal and Intereſt, according to *St.* 4 & 5 *Ann.* and *plene Adminiſtravit*. *Anon.* *M.* 9 *G.* 2. *B. R. H.* 178.]

[*Non eſt Factum*, and Diſcharge by Commiſſion of Bankrupt, allowed. *Atkinſon* v. *Atkinſon*, *T.* 4 *G.* 2. *Str.* 871.]

[Bankrupt allowed to plead his Bankruptcy generally and ſpecially. *Ld. Clinton* v. *Morton*, *M.* 8 *G.* 2. *Str.* 1000.]

[In Debt on Bond, to marry Plaintiff if requeſted, allowed to plead *Non eſt Factum*, and never requeſted. *Dunn* v. *Vacher*, *T.* 5 *G.* 2. *Str.* 908.]

[On an Information of Debt on Bond to the Crown, *Non eſt Factum*, and Conditions performed, allowed. *Attorney-General* v. *Snow*, *H.* 1721. *Bunb.* 96.]

[In Replevin, *Non capit*, Property in another, and *liberum Tenementum*, allowed. *Barnes* 364.]

[In *Quare Impedit*, that he was ſeiſed in Fee of Advowſon, and that he had the next Turn, allowed. *Biſhop of Wincheſter* v. *Cook*, *P.* 3 *G.* 2. *Fort.* 337.]

To a *Scire Facias* on an old Judgment, Terre-tenant may plead Payment of the Money recovered, and that Defendant in that Judgment was not ſeized. *Ellis* v. *Mortimer*, *T.* 8 *G.* 2. *B. R. H.* 153.]

[*Not guilty*, and *liberum Tenementum*—In Replevin, that Plaintiff has no Property, and Juſtification—Damage-feaſant, and under Demiſe from Defendant to Plaintiff—Diſtreſs for Damage-feaſant, and Rent in Arrear—*Solvit ad Diem*, and mutual Debt—*Non Aſſumpſit*, and Diſcharge under Debtor's Act—*Non eſt Factum*, and ſuch Diſcharge—*Non Aſſumpſit*, and *Non Aſſumpſit infra*, *&c.*—*Plene Adminiſtravit*, and ſet off.—*Non Aſſumpſit*, and *Plene Adminiſtravit*—Not guilty, and General Releaſe—Not guilty, and Money paid Plaintiff in Satisfaction of all Treſpaſſes to ſuch a Time—*Ne unques Executor*, and *Plene Adminiſtravit*—Not guilty, and *Mollitur manus impoſuit*, *ſon aſſault Demeſne*—*Non eſt Factum*, and *Ne unques Executor*—Not guilty, *ſon aſſault Demeſne*, and Satisfaction for all Treſpaſſes—Not guilty and Juſtification—*Non eſt Factum* and Dureſs—*Non Aſſumpſit*, Set-off and Tender—Tender to firſt Count, *Non Aſſumpſit* to the Reſidue—*Non Aſſumpſit* by Teſtator, general *plene Adminiſtravit*, and ſpecial *plene Adminiſtravit*—In Treſpaſs, Aſſault and Battery, Not guilty and Licence—may be pleaded jointly. *Barnes* 336, 338, 339, 340, 340, 343, 329, 347, 348, 272, 349, 275, 286, 352, 279, 352, 355, 355, 356, 359, 360, 362, 363, 364, 365, 366.]

[*Non Aſſumpſit*, and Statute of Uſury, refuſed. *Ld. Barnard* v.———, *H.* 8 *G. Fort.* 336.]

[Bankrutcy and *Non Aſſumpſit* refuſed. *Newman* v. *Chandler*. *Fort.* 336.]

[*Non Aſſumpſit* and *Non Aſſumpſit infra ſex ann.* refuſed, *per Cur. Fort. cont. Whelpdale* v. *Atkinſon*. *Fort.* 337. *Vide ſupra contra.*]

[*Non Aſſumpſit* and a general Releaſe refuſed. *Glover* v. *Heathcot*. *Fort.* 337. *Barnes* 328.]

[*Non Aſſumpſit*, and a Tender, not allowed. *Baker* v. *Weſtbrooke*, *P.* 6 *G.* 2. *Str.* 949.]

[In Treſpaſs, *Not guilty*, and a Juſtification for a Way, not allowed. *Fiſher's Caſe*. *Fort.* 335.]

[In Treſpaſs, Tender of Amends, and Juſtification that Plaintiff's Fences were out of Repair, not allowed. *Antony* v. *Williams*, *T.* 4 *G.* *Fort.* 336.]

[If Defendant in Treſpaſs pleads in Juſtification two Titles, one by Leaſe for Lives, and one Life living 12th *July*, and yet as to 12th *July* another Title and Seiſin in Fee; it is repugnant and naught. *Taylor* v. *Woollen*, *P.* 2 *G.* 2. *Fort.* 380.]

[In Aſſault and Battery, *Non eſt Factum* and a Juſtification cannot be pleaded. *Palmer* v. *Wadbrooke*, *M.* 4 *G.* 2. *Str.* 876.]

[To Debt on Bond, *Non eſt Factum* and Coverture in Plaintiff not allowed, for one is in Bar, the other in Abatement. *Holt* v. *Mabberley*, *T.* 8 *G.* 2. *B. R. H.* 135.]

[*Liberum Tenementum*, and Juſtification or Not guilty—Not guilty, and Accord and Satisfaction—*Non Aſſumppt*, and ſeveral Set-offs—*Nil debet*, and *nil habuit in Tenementis*—Not guilty and Juſtification, in Treſpaſs—*Non Aſſumpſit*, and *Non Aſſumpſit infra*, *&c.* after Money paid into Court—Not guilty, and a Releaſe of particular Treſpaſs—Not guilty, and Tender—In Trover, Not guilty, and that Plaintiff became Bankrupt—*Non Aſſumpſit*, and Infancy—*Non eſt Factum*, and *ſolvit poſt Diem*—cannot be pleaded jointly. Nor *Non Aſſumpſit*, and *Plene Adminiſtravit*—*Solvit ad Diem*, and *riens per Deſcent*—Not guilty, and a Licence—without Affidavit. *Barnes* 329, 350, 329, 333, 333, 339, 338, 351, 359, 360, 363, 363, 332, 332, 351.]

But this Statute does not extend to plead double Matter, which ſhall have different Trials: As, in Dower, to plead *Ne unques accouple* and a Mortgage; for the firſt Matter ſhall be tried by the Biſhop, and the other by a Jury, and the Judge cannot certify if there was a probable Cauſe. *R. inter Harding and Harding C. B. M.* 9 *Ann.* *(Vide Comyns's Reports* 148.*)*

[*Non Aſſumpſit*, and *Non Aſſumpſit infra ſex ann.* pleaded, to the ſecond, Replication, an Original, Rejoinder, *nul tiel Record*, Judgment for Plaintiff, and

Plaintiff executes Writ of Inquiry; afterwards the firſt Iſſue of *Non Aſſumpſit* tried, and Plaintiff non-ſuited, and thereupon on Motion, the Writ of Inquiry diſcharged; for if one Iſſue be for Defendant, Plaintiff cannot recover. *Prior* v. *Ld. Ilay, M.* 8 *G.* 2. *Fort.* 338.]

(E. 3.) Muſt not be Argumentative.

So a Plea ought to be direct and poſitive, and not by way of Rehearſal, or Argumentative. *Co. Lit.* 303. *a. Mar.* 207.

As, in Trover for an Indenture, whereby *A.* granted a Manor, rendring Rent, it is no Plea *that A. did not grant the Manor*; for it is no Anſwer to the Declaration, except by Argument. *R. Yel.* 223, 4.

In Ejectment on a Leaſe for 10 Years, it is no Plea, that by Cuſtom there cannot be a Leaſe for more than ſix Years. *R. Dy.* 357. *b.*

In *Formedon* for a Manor, if the Tenant ſays that *A.* being ſeiſed levied a Fine, *&c.* it is not ſufficient to reply, that *Tempore Finis* and at all Times afterwards *B.* was ſeiſed *&c.* for this is an Anſwer only by Argument. *Sav.* 85, 86.

So, if a Man pleads a Grant by the King, he ought to plead directly, that the King *conceſſit*, and not by a *Teſtat' exiſtit quod conceſſit*. 1 *Sand.* 274.

Otherwiſe in Covenant. *Vide Poſt*, (2 V. 2.)

If the Defendant avows and ſays that *A.* was poſſeſſed, *et ſic poſſeſſionat' per Indenturam teſtat' exiſtit* that he aſſigned, it is not good. *R.* 2 *Sand.* 319. 2 *Lev.* 12.

So, if the Defendant pleads a Leaſe, *&c.* by a *Teſtat' exiſtit*, it is bad. *Cro. El.* 195. 2 *Cro.* 537.

But an Argumentative Plea ſhall be aided by Verdict, or on a general Demurrer. *Al.* 48.

(E. 4.) Nor vary from the Place in the Declaration without Neceſſity.

So a Plea in Excuſe or Juſtification ought to alledge the Fact in the Place mentioned in the Declaration, if the Nature of the Juſtification does not otherwiſe require: And therefore in Treſpaſs at *A.* if the Defendant juſtifies by an Execution at *B.* in the ſame County, it is bad; for no Place in the ſame County is material upon Proceſs to the Sheriff. *R.* 3 *Lev.* 113.

In Debt at *London* on a Bond to pay, if a Ship did not miſcarry, Plea, *that it did miſcarry at Falmouth in Cornwall*, is bad; for the Place is not material. *R.* 1 *Lev.* 149.

So a Plea, *that he made the Bond in another County being within Age*, is bad. *Dal.* 18.

(E. 5.) Muſt be certain.

Vide Certainty in the Declaration. *Ante*, (C. 17, 18, 19, 20, 21, 22.)

So a Plea ought to be certain. And therefore, if the Defendant pleads, that he has expended 810*l.* for Repairs *et alia Onera neceſſaria*, it is bad for the Uncertainty; for he ought to ſhew for what Charges he has expended them, by which the Court may judge, whether they were neceſſary or not. *R.* 1 *Sand.* 49.

So, in Debt upon a Bond to make an Aſſurance of Land, if the Defendant pleads, that he executed a Releaſe, it is bad, if he does not ſhew that it concerns the ſame Land. 2 *Co.* 4. *a.*

If the Defendant pleads, that he paid *tot' denar' Summas quant'* the Plaintiff *meruit*, without ſaying what Sum he paid, it is bad. *R. Mar. pl.* 120.

So, if a Man be bound to give all the Money in his Pocket, if he ſays that he gave all, it is bad; for he ought to ſhew what Sum he gave. *Lat.* 16.

So, if he be bound to convey all his Land, and he pleads, that he has conveyed all. *Ibid.*

So, if a Man be bound to pay all Charges to *A.*'s Attorny, expended in ſuch a Suit, if he pleads that he paid *omnes Miſas et Cuſtagia* in that Suit, it is bad; for he ought to ſhew that the Charge was ſo much, which he has paid. *R. Lut.* 421, 422.

If

If the Defendant pleads, that *A.* has paid all Debts to the Plaintiff, he ought to ſhew what Debts, *&c.* *R.* 3 *Leo.* 3. *Mo.* 12.

If he pleads, that he made an Eſtate by the Advice of *B.* it is bad, if he does not ſhew what Eſtate. *Hob.* 295.

If he pleads, that he levied Part of the Money, without ſaying how, it is bad. *R.* 3 *Leo.* 223.

If he juſtifies a Taking for a Contempt *tam Verbis quam Factis*, without ſhewing what the Words or Facts were. *R.* 2 *Leo.* 34.

If he pleads Payment to an Aſſignee of a Bill of Exchange, he ought to ſhew a Cuſtom to aſſign. *Semb.* 3 *Mod.* 226. *but afterwards it was R. cont. Sho.* 128.

If he pleads an Excuſe of his Performance, he ought to ſhew all done by him that he could do. *R. Sho.* 335.

If he pleads the taking of a Ship as a Prize, he ought to ſhew a Cauſe of Forfeiture. *R. Carth.* 32.

If a Condition be to deliver at ſuch a Day, it is not ſufficient to ſay, that he delivered *ſecundum Formam Conditionis*, without ſhewing what and at what Time in certain. *Semb.* 1 *Lev.* 145.

If it be to enjoy an Office according to Letters Patent, he ought to ſhew the Effect of the Patent, and that the Plaintiff enjoyed accordingly. *Hob.* 295.

If the Defendant pleads a Feoffment to a Uſe, it is not good, if he does not ſhew a Seiſin at the Time of the Feoffment. *Kit.* 228. *b.*

So, if he pleads a Leaſe and Releaſe, and does not ſhew Poſſeſſion at the Time of the Releaſe. 7 *H.* 7. 3.

If he pleads an Entry by the Command of *Ceſtuy que Uſe*, and does not ſhew that he was ſeiſed to the Uſe. *Kitt.* 228. *b.*

If he pleads a Re-entry for Non-payment of Rent, and does not alledge a certain Demand. *R. Al.* 19. *R. Hob.* 331.

If he pleads a Deſcent to him as Heir, without ſaying how he is Heir. 1 *Lev.* 190.

If the Defendant, in Treſpaſs *quare Clauſum fregit*, pleads, *that it was his Freehold*, he muſt ſay, *at the Time of the Treſpaſs*, otherwiſe it will be bad. *Pol.* 132.

So, if he pleads, that the Rent was more than the Value, in Debt for Rent againſt him as Executor, without ſaying at what Time it was ſo, it is bad. *Pol.* 132.

If, in Treſpaſs, he pleads that three Juſtices did not, *&c.* he muſt ſay, *nec eorum Aliquis.* 2 *Mod.* 284.

If he pleads *pro eo quod non monſtravit, &c.* it is bad; for the Matter in Bar muſt be alledged certainly. *R. Cro. El.* 242. *Semb.* 1 *Sand.* 117. *Dy.* 257. *b.*

Or if he pleads *quia obſtruxit*; for he ought to ſay preciſely *quod obſtruxit*. *Cro. El.* 441.

In a Plea to Part, the Part to which it is pleaded ought to be aſcertained. *Vide Poſt*, (E. 27. F. 4.)

In a Plea, the certain Place and Time of every Thing material and traverſable ought to be alledged. *Vide ante*, (C. 19, 20.)

How it ſhall be alledged. *Vide ante*, (C. 19.)

(E. 6.) And ſhall be moſt ſtrong againſt the Defendant.

And ſhall be taken moſt ſtrongly againſt the Defendant. *Co. Lit.* 303. *b. Pl. Com.* 29. *a.*

And therefore, in Treſpaſs, if the Defendant pleads a Releaſe, without ſaying at what Time it was made, it ſhall be intended to be made before the Treſpaſs; for this is moſt ſtrong againſt the Defendant. *Pl. Com.* 46. *a.*

So, in Waſte, if the Leſſee pleads that it was for Mines, without ſaying when the Mines were opened, it ſhall be intended that they were opened after

after the Leaſe; for that is the moſt ſtrong againſt the Defendant. *Per Hob.* 234.

If the Defendant pleads, that *A.* ſeiſed of a Manor *unde Locus in quo, &c.* was Parcel, demiſed his Manor except *B. &c.* it ſhall be intended, that the *Locus in quo, &c.* was Parcel of *B.* if the contrary does not appear. *R. Pl. Com.* 104. *a.*

So, if to a Bond the Defendant pleads *Payment*, it ſhall be intended after the Day, if he does not ſay otherwiſe. *Pl. Com.* 104. *a.*

In *Dum fuit infra Ætat'*, if the Tenant pleads a Releaſe by the Demandant, without ſaying when, it ſhall be intended within Age. *Pl. Com.* 104. *a.*

If a Man pleads *Quod A. capt' et arreſtat' fuit in Lond'* without ſaying by what Authority, it ſhall be taken to be an Arreſt by Wrong. *Dy.* 120. *a.*

But it ſhall not be intended againſt the Defendant, where ſuch Intendment is not conſiſtent with another Part of the Plea: As a Leaſe by a Biſhop ſhall not be intended to be by one then alive, where the Plea afterwards ſays *per A. nuper Epiſcopum. R.* 10 *Co.* 59. *b.*

(E. 7.) But Certainty to a Common Intent is ſufficient.

Vide ante, (C. 24)

But Certainty to a common Intent is ſufficient. *Co. Lit.* 303. *a.*

And therefore, in Aſſize, if the Tenant plead that his Father was ſeiſed and died ſeiſed, and he entred as Son and Heir, it is good; tho' it may be that the Father of the Demandant abated after his Anceſtor died and before his Entry: but it ſhall not be intended; for when he ſays, that his Father died ſeiſed and he entred, the common Intendment is, that he entred immediately. *Pl. Com.* 26, 28, 33.

So, if a Plea be, that the Defendant ſurrendred and releaſed a Copyhold in full Court, and the Plaintiff accepted it, tho' it is not ſaid, that the Surrender was to the Plaintiff's Uſe, it is ſufficient; for it ſhall be intended *R. Cro. Car.* 6.

So a Plea to Debt on a Bond for the Enjoyment of Land, which *poſt Confectionem uſque Diem Billæ* the Plaintiff enjoyed, is good, tho' it is not ſaid *ſemper poſt*; for it ſhall be intended. *R. Cro Car.* 195.

So, in Treſpaſs, if the Defendant juſtifies as Servant, without ſaying by his Command, it is good; for it ſhall be intended.

If the Defendant ſays that the Maſter of a College and his Fellows were ſeiſed in Fee, it ſhall be intended, in Right of the College. *Pl. Com.* 102. *Vide Poſt*, (2 B. 1.)

If ſeveral Writs are mentioned to Sheriffs of ſeveral Counties, and one was an Extent, and it is ſaid *quod prædict'* Sheriff returned, *&c.* it ſhall be intended the ſame Sheriff, to whom the Writ was directed. *Pl. Com.* 65. *b.*

(E. 8.) So leſs Certainty where the Matter may be aſcertained by Evidence.

So, where no Certainty at preſent is known, it is ſufficient to ſhew the Certainty in Evidence and alledge generally in the Pleading: As, if a Man aſſumes to give a Bond with ſufficient Sureties to ſave harmleſs in ſuch a Suit; it is ſufficient to ſay, that he gave a Bond with ſufficient Sureties, without ſaying in what Penalty, *&c.* for, till the Suit is determined, it is not known how much is ſufficient, and it ſhall be ſhewn in Evidence. *R.* 1 *Lev.* 297.

(E. 9.) And neceſſary Circumſtances ſhall be intended.

And neceſſary Circumſtances ſhall be intended: As, if a Man pleads a Feoffment, Livery need not be alledged; for it ſhall be intended. *Co. Lit.* 303. *b.*

So Attornment of Tenants ſhall be intended, if a Feoffment of a Manor be pleaded. *Co. Lit.* 310. *b.*

So, if the Defendant pleads an Aſſignment of Dower, it ſhall be intended to be by *Metes* and Bounds. *D. Cro. Car.* 162.

If he pleads a Requeſt by an inferior Judge to a ſuperior to aſſume the Juriſdiction of a Cauſe out of the inferior Eccleſiaſtical Court; it ſhall be intended that the Requeſt was under Seal. *R. Cro. Car.* 162.

So, if he pleads that the Sheriff made a Warrant, he need not ſay *ſub Sigillo*. *R. Cro. El.* 53. *Pal.* 357.

If he pleads himſelf to be Heir to *A.* he need not ſay, that *A.* is dead, *Dal.* 67.

Or, that *A.* had no Son, *&c. Dal.* 67.

So where the Plea refers to a Thing, which ſhews the Certainty, it need not be particularly alledged: As, in Debt on a Bond, if the Defendant pleads a Recovery and Execution againſt another Obligor, he need not ſay by what Proceſs or in what County; for this appears by the Record. *R. Dal.* 33.

So, where the Certainty of the Lands appears, there is no need to ſay *per Nomen* how they are deſcribed by the Deed; which will not make a bad Plea good, tho' ſometimes it makes a Plea bad. *Lut.* 1006.

(E 10.) And leſs Certainty is neceſſary for an Inducement.

And it is not requiſite to have ſo much Certainty in pleading a Matter, which is only Conveyance or Inducement. *Co. Lit.* 303. *a.* *Vide ante*, (C. 31, 43.)

As, in Treſpaſs, if the Defendant juſtifies, that he being poſſeſſed for Years the Plaintiff would have ouſted him, and he in Defence of his Poſſeſſion *molliter Manus impoſuit*, he need not ſhew by whom, or when, or for how many Years he was poſſeſſed. *R. Cro. Car.* 138. *Vide Poſt* (E. 19.) *Poſt*, E. 18.)

In Annuity, if the Defendant pleads that it was granted for holding his Courts, and being ſeiſed of the Manor of *D.* he requeſted the Plaintiff to hold a Court there, who refuſed, he need not ſay of what Eſtate he was ſeiſed. *Cro. El.* 419.

In Treſpaſs, if the Defendant juſtifies by a Deviſe, and the Plaintiff replies, that the Deviſor died ſeiſed, and it deſcended to him as Couſin and Heir, he need not ſhew, how Couſin. *R.* 2 *Cro.* 86.

In an Action upon the Caſe for a Nuſance in throwing Carrion into a Cloſe *per quod diverſa Averia interierunt*, it is ſufficient, without ſayiug what or how many Beaſts. *R. Al.* 22.

If a Man makes Title to an Office, he ought to preſcribe for it; but if he alledges the Office only as Inducement, it is ſufficient to ſay *quod eſt antiquum Officium*. *R.* 10 *Co.* 59. *b.*

In Avowry, if he alledges a Partition between *A.* and *B.* whereby the *Locus in quo, &c. inter alia fuit allot'* to *A.* and ſo juſtifies, *Damage feaſant*, it is ſufficient, without ſaying what Lands in certain were allotted to *A.* and what to *B.* *R. Plo.* 431. *a.*

(E. 11.) Or for a Negative Matter.

So there is no Need of ſo much Certainty for a Matter in the Negative. *D. Pl. Com.* 33. *b.*

As, in an Action upon the Caſe for not taking ſufficient Pledges, the general Averment, that he has not taken ſufficient Pledges is ſufficient, being in the Negative. *R. Lut.* 159.

In Debt on a Bond to indemnify, it is ſufficient to ſay, *Not damnified*, without ſhewing how he has indemnified. *Vide Poſt, E.* 25.]

In Debt on a Bond that he will permit Ingreſs and Regreſs, *&c.* it is ſufficient to ſay *quod permiſit*; for is tantamount to *that he did not diſturb*. *R.* 1 *Leo.* 136.

(E 12.) And Surpluſage does not prejudice.

Vide ante, (C. 28.)

And Surpluſage does not prejudice: As, if the Defendant in Replevin avows as Bailiff to *A.* Adminiſtrator of *B.* where *A.* ought to diſtrain in his own Right, the Words *Adminiſtrator of B.* ſhall be rejected as Surpluſage. *D. Hob.* 208.

Except where it is repugnant or contrary to Matter precedent. *Co. Lit.* 303. *b.*

As, if in *Quare Impedit* the Defendant pleads a Preſentment of one *mere laicus* who was admitted, inſtituted, and inducted, *per quod Eccleſia remanſit vacua*, this is repugnant. *Dy.* 293. *a.*

[In Action of Aſſault againſt *A.* and *B.* if *A.* confeſſes, and *B.* pleads that he and *A.* is not guilty, and Iſſue is joined, and *B.* found Guilty, the Words relating to *A.* may be rejected. *Hill* v. *Fleming*, *M.* 10 *G.* 2. *B. R. H.* 341.]

(E. 13.) When the General Iſſue ſhall be pleaded.

When a Man has no ſpecial Matter for his Juſtification or Excuſe, he ought to plead the General Iſſue, to avoid Prolixity in Records.

And he may plead the General Iſſue, tho' the Declaration contains Matter of Record, as well as of Fact. *Vide Poſt*, (2 H.)

And if a Man may plead the General Iſſue, it is more ſafe; for if he pleads ſpecially, he gives the Advantage of a Replication or Defence to the other Party. *D. Hob.* 103.

And therefore after a ſpecial Plea, he may waive it, and plead the General Iſſue. But he cannot waive it after a Motion and Order for a Trial at Bar. *F. g.* 267.

The General Iſſue needs no Inducement: As, *Not guilty*, *Nil debet*, *Ne diſturba pas*, *&c.* *Hob.* 103.

If the General Iſſue be pleaded, the Plaintiff cannot reply, but muſt join Iſſue. *Semb. Co. Lit.* 126. *a.*

As, if the Defendant pleads, *Not guilty*, *Nil Debet*, *&c. et de hoc ponit ſe ſuper Patriam*, the Plaintiff regularly ſhall join with him in the like Form, *Et Prædict'* Plaintiff *ſimiliter* *Co. Lit.* 126. *a.*

So ſometimes on a Negative Plea, the Plaintiff or Defendant ſhall join as on a General Iſſue, and cannot reply: As, in Dower, if the Tenant pleads *Ne unqaes ſeiſie que Dower.* *Co. Lit.* 126. *a.*

So, if the Defendant or Tenant pleads a Fine in Bar, and the Plaintiff or Demandant replies *Quod Partes Finis nihil habuerunt*, *et hoc petit quod inquirata per Patriam*, the Tenant or Defendant ſhall ſay *Et prædict' A. ſimiliter.* *Co Lit.* 126. *a.*

So, if the Tenant vouches, and the Demandant counterpleads the Voucher, for that the Vouchee or his Anceſtors had nothing by which they could enfeoff, *Et hoc petit*, *&c.* the Tenant ſhall ſay, *Et prædict' T. ſimiliter.* *Co. Lit.* 126. *a.*

[On *Non Aſſumpſit*, an uſurious Contract may be given in Evidence, but in Caſe of a Specialty it muſt be pleaded. *Lord Bernard* v. *Saul*, *H.* 8 *G. Str.* 498.]

[On not Guilty, for beating a Horſe, Defendant may juſtify in Evidence. *Slater* v. *Sevan*, *T.* 4 *G.* 2. *Str.* 872.]

[In Caſe, on general Iſſue pleaded, any Thing may be given in Evidence that deſtroys Plaintiff's Action. *Barber* v. *Dixon*, *H.* 17 *G.* 2. *Wilſ.* 44.]

[If Defendant withdraws a ſpecial Plea, he cannot plead another, but the general Iſſue only. *Law* v. *Law*. *H.* 7 *G.* 2. *Str.* 960.]

[Tho' Defendant may ſtrike out ſpecial Plea, and plead the general Iſſue, yet he cannot do ſo without Leave of the Court, nor can he do it after a ſham Plea. *Weld* v. *Needham*, *M.* 17 *G.* 2. 1 *Wilſ.* 29. *Ellis* v. ——, *H.* 8 *G.* 3. 2 *Wilſ.* 369.]

[He

[He may do it the ſame Term before Replication without Coſts; and if Plaintiff has a Verdict afterwards, he cannot have thoſe Coſts. *Barnes* 127.]

[Plea of Judgment, *&c.* may be withdrawn, and *plene adminiſtravit* pleaded. *Barnes* 330.]

[Plea of Tender cannot be withdrawn to plead general Iſſue. *Ibid.*]

[After *Non Aſſumpſit infra, &c.* Defendant may not add *Non Aſſumpſit*. *Barnes* 332, 338.]

[After Demurrer by Bail, joined, *Nul tiel Record* ſhall not be pleaded. *Barnes* 334.]

[Demurrer may be withdrawn, and general Iſſue pleaded, if Defendant offers it before Aſſiſes. *Barnes* 337.]

[General Iſſue may be withdrawn, and ſpecial Juſtification pleaded, on Coſts, if Plaintiff not delayed thereby. *Barnes* 346.

[If a ſpecial Plea goes to the Action, and Plaintiff replies to the Country, and has been delayed, the Court will not give Leave to withdraw and plead the general Iſſue. *Freeman* v. *Jones*, *H.* 9 *G.* 3. 2 *Wilſ.* 391.

[If a Miſtake happens by Death of Attorney, General Iſſue may be withdrawn, and Money paid into Court *Barnes* 344.]

(E. 14.) Plea amounting to the General Iſſue is bad.

And therefore a Plea, which amounts to the General Iſſue, is bad; for the General Iſſue ought to be pleaded. *Co. Lit.* 303. *b.* 3 *Mod.* 166.

As, in Treſpaſs by a Commoner, if the Defendant pleads, that, being Lord, he dug in the Common for Coals and left ſufficient Common; for this amounts only to *Not guilty*. *R.* 1 *Sid.* 106.

So, in *Aſſumpſit*, if the Defendant pleads a Bond given for the Debt and Execution thereon, and traverſes that he was indebted *aliter aut alio Modo*. *R. Cro. El.* 201. *Semb.* 5 *Mod.* 314. *Vide Poſt*, (2 G. 12.)

Or pleads another Promiſe, and traverſes the Aſſumption *Modo et Forma*. *R.* 2 *Rol.* 350.

So, in Aſſize, if the Tenant pleads a Feoffment by the Demandant; for this amounts to the General Iſſue.

So, in Treſpaſs for Goods taken; Property in *A.* who gave them to the Defendant amounts to the General Iſſue. 5 *Mod.* 253.

Or Property in *A.* and an Impounding by the Plaintiff, upon which the Defendant by *Replevin* took them. *Semb.* 5 *Mod.* 252. *R.* 1 *Sal.* 394.

So, in Treſpaſs *quare Clauſum fregit*, if the Defendant juſtifies by a Demiſe to him by the Plaintiff at Will, for Years, *&c.* *Sti.* 355. 5 *Mod.* 253.

Or, if he juſtifies *Damage feaſant* in another Cloſe. *Lut.* 1451. *Per* 2 *J. Dy.* 19. *a.*

[So in Treſpaſs *Quare Clauſum fregit*, and broke his Hop-poles, if Defendant pleads *liberum tenementum*, and that the Poles were Damage-feaſant and he diſtrained them, it is bad. *R. on Demurrer*. *Sparks* v. *Keble*, *M.* 11 *G.* *Fort.* 378.]

[Or if Plaintiff declares for obſtructing his Watercouſe, by digging Pits and making Bonds, and Defendant pleads that there were two ancient Pits which were choaked up with Mud, and therefore he made two others, which he had a Right to do, *&c.* it amounts to the General Iſſue; for he had no Right to make new Pits, tho' he might have ſcoured the old. *Brown* v. *Beſt*, *M.* 21 *G.* 2. 1 *Wilſ.* 174.]

So in *Audita Querela* on a Defeazance, if the Plaintiff pleads another Defeazance, and traverſes the Defeazance in the Declaration, for it amounts to *Non eſt Factum*. *R. Cro. El.* 532.

In Debt on a Bond, if the Defendant pleads that it was his Deed, but not delivered to the Plaintiff but to another. *R.* 1 *Sid.* 450.

If on a Bond to *A.* the Plaintiff's Wife, the Defendant pleads, that it was delivered to *A. quæ obiit inupta*; for then, *Non eſt Factum*. *R.* 1 *Veut.* 77.

If to an Action on the Caſe for a vexatious Petition againſt him in Council, he pleads that the Plaintiff did ſuch an Act, for which, *&c.* *R* 3 *Mod.* 166.

So, in Trover, if the Defendant pleads that he took, as a Diſtreſs for Toll, *&c.* *R. Hob.* 187. *R. Cro. El.* 435.

So in Treſpaſs by *A.* for Goods, if the Defendant juſtifies by Proceſs out of the Hundred Court upon a Replevin againſt the Goods of *B.* for if they are the Goods of a Stranger the Defendant is not guilty, *R. Skin.* 674.

Yet Matter of Law may be pleaded ſpecially, tho' it may be given in Evidence on the General Iſſue. *R.* 2 *Vent.* 295. *R. inter Huſſey and Jacob in B. R. Tr.* 8 *W.* 3. 1 *Sal.* 344. 2 *Mod.* 276. *Per Holt, Skin.* 362.

So, if an Adminiſtrator pleads, That Goods of the Inteſtate to ſuch a Value came to his Hands, which he detains for his own Debt, and has no Aſſets *ultra*, it is good, tho' it amounts to *Plene Adminiſtravit*. *R. Hob.* 127.

In Conſpiracy, the Defendant may plead a legal Proſecution, tho' it amounts to *Not guilty*. *R. Cro. El.* 871.

In *Aſſumpſit*, *Payment*, tho' it may be given in Evidence on *Non Aſſumpſit*. *R.* 1 *Sal.* 394.

In Debt, *a Releaſe*, tho' it may be given in Evidence on *Nil debet*. 1 *Sal.* 394.

In Debt upon a Leaſe for Years, *Entry into Part.* 1 *Vent.* 2.

So, if the Plea be for greater Certainty: As, in Treſpaſs in *A.* if the Defendant pleads that there are ſeveral *A.'s*, and none without Addition, and juſtifies in *Black A.* this does not amount to the General Iſſue. *Semb. Lut.* 1492.

So an entire Plea is good, tho' to Part of the Declaration it amounts only to the General Iſſue. *R.* 3 *Lev.* 40.

So a Plea, which confeſſes and avoids the Plaintiff's Title, is good, tho' the Matter may be given in Evidence, on the General Iſſue: As, in Trover, if the Defendant pleads that *A.* was poſſeſſed and loſt the Goods, that *B.* found them and gave them to the Plaintiff, who loſt them, and the Defendant found them, and by the Command of *A.* converted them. *R. Cro. El.* 262. *R. cont. Lat.* 185. for there it is ſaid, that every Plea in Trover, which gives Colour to the Plaintiff, is bad, becauſe it amounts to the General Iſſue, except where it concerns the Title of Land. *Vide Cro. El.* 555, 146. 1 *Leo.* 178. *Vide Action upon the Caſe upon Trover*, (G. 6.)

So it is bad, tho' it concerns the Title, if it does not convey a good Title. *Lat.* 185.

And therefore it ſeems to be in the Diſcretion of the Court, when a Plea, amounting to the General Iſſue, ſhall be allowed; and therefore the Plaintiff ought not to demur, but pray the Opinion of the Court. *D. Hob.* 127. *R.* 1 *Leo* 178.

And a Plea amounting to the General Iſſue is only Form. *Semb.* 1 *Rol.* 113. *Cont.* 2 *Rol.* 350. *Semb. Cro. El.* 871. *R. Sho.* 76, 133.

(E. 15.) When a Plea ſhall be Special.

(E. 15.) If it be by Way of Excuſe or Juſtification.

But, if a Man has Matter of Juſtification or Excuſe, he ought to plead it ſpecially. *Co. L.* 282. *b.*

As, if he juſtifies by Proceſs out of an inferior Court, he ought to ſhew in what Action, *&c.* that it may appear that the inferior Court had Juriſdiction. *Per* 2 *J. Mar.* 118.

In Debt upon a Leaſe of a Vicarage, if the Defendant pleads a Sequeſtration, he ought to ſhew before whom, for what Cauſe, and legal Proceſs. *Hob.* 296. *Vide Poſt*, (E. 18.)

If the Defendant pleads a Diſcharge, he ought to ſhew ſpecially, how he was diſcharged. *Hob.* 296.

As, if he pleads a Diſcharge of Tithes, which is a Bar to a Thing due of Common Right, he ought to ſhew how. *Ibid.*

A Plea in Juſtification muſt confeſs the Treſpaſs, Tort, *&c.* *Sal.* 637, 8.

[Treſpaſs for taking Materials; on not guilty pleaded, Defendant ſhall not give Evidence of taking the Goods as a *Deodand*, for he ſhould have juſtified. *Dryer* v. *Mills*, *T.* 3 *G.* *Str.* 61.]

[On

[On Treſpaſs by Huſband and Wife, Defendant on the general Iſſue ſhall not controvert the Marriage. *Deckinſon* v. *Davis*, *M.* 8 *G.* *Str.* 480.]

[If Defendant claims an *Eaſement*, he muſt plead it ſpecially, and cannot give it in Evidence on the general Iſſue. *Hawkins* v. *Wallis*, *T.* 3 *G.* 3. 2 *Wilſ.* 173.]

[To Treſpaſs *quare clauſum*, *&c.* an Highway muſt be pleaded ſpecially. *Barnes* 448.]

How Performance or other Acts are to be averred. *Vide ante*, (C. 51, *&c.*)

So Special Matter ought to be ſpecially anſwered. *Co. Lit.* 303. *b.* (E. 16.) In Anſwer to Special Matter.

In Maintenance, the Defendant juſtifies, that he being a Neighbour, recommended a Counſel to him; the Plaintiff replies, that he gave him Money; the Defendant cannot rejoin, that he did not maintain *Modo et Formâ*, but muſt anſwer the ſpecial Matter. *Kit.* 232. *a.*

So, if a Man be enabled by a Warrant, or other Authority, regularly, he ought to ſhew it ſpecially. *Co. Lit.* 283. *a.* (E. 17.) Act by ſpecial Authority.

As, in Treſpaſs, if the Defendant juſtifies as Bailiff to the Sheriff, it is not ſufficient to ſay, that he did it by the Mandate of the Sheriff, but he ought to ſhew his Warrant. *R.* 3 *Mod.* 138. 4 *Mod.* 378.

So, in Treſpaſs, it is not ſufficient to ſay, that the Defendant took, *&c.* *tanquam Ballivus Manerii per Mandat' Domini*; but he ought to ſhew a Precept directed to him. *R.* 4 *Mod.* 378.

And he ought to ſhew the Subſtance and Effect of his Authority to have been ſpecially purſued. *Co. Lit.* 303. *b.*

When Matter of Record is the Foundation and Subſtance of the Plea, it ought to be certainly and truly alledged. *Co. Lit.* 303. *a.* (E. 18.) When a Record, *&c.* ſhall be ſpecially alledged.

And a Record muſt not be alledged *inter alia*, for it is intire, and depends upon an Original and a Judgment, and cannot be divided. *D. Hob.* 226. *Pl. Com.* 65. *a.*

And therefore, in an Inferior Court, which is not of Record, the whole Proceeding there ought to be pleaded at large, and it is not ſufficient to ſay, *taliter proceſſum fuit*. *R.* 2 *Vent.* 100. *Vide infra.*

So the Proceedings in an Inferior Court, tho' it be of Record. *Semb.* 2 *Vent.* 100.

So a Plaint alledged, upon which *taliter proceſſum fuit* that there was Judgment, without ſhewing an Appearance and Declaration, is not ſufficient. *R. Lut.* 918.

So in pleading an Execution by a Court at *Weſtminſter*, he ought to alledge an Ejectment, *&c.* upon which *taliter proceſſum fuit*, that the Plaintiff had Judgment, and thereupon ſued out Execution, and it is not ſufficient to alledge an Execution, without ſhewing the Judgment. *R.* 1 *Lev.* 83.

Yet, if Proceedings in an Inferior Court be pleaded, it is ſufficient to ſay, that a Plaint was levied, and thereupon *taliter proceſſum fuit*, that the Plaintiff was nonſuited, *&c.* *R.* 2 *Lev.* 81. *Semb. Sho.* 48. *Semb.* 3 *Lev.* 243. *R.* 3 *Lev.* 404. *Ca. Parl.* 94. *Carth.* 53.

So, if he pleads, that *implacitaſſet* and found Pledges, upon which *taliter proceſſum fuit*, *&c.* without ſaying, that a Plaint was levied, for it is *tantamount*. *R.* 3 *Lev.* 404.

So, if he pleads that a Plaint was levied, upon which Proceſs iſſued to the Defendant, who took and afterwards permitted an Eſcape, it is ſufficient, without ſhewing what Authority the Court had, where the Plaintiff is a Stranger to it. *Adm. Cro. Car.* 46. *Dub. Mod. Ca.* 72.

And ſuch ſhort Pleading is ſufficient in an Inferior Court, tho' it be not of Record; for the Whole ſhall be given in Evidence. *Ca. Parl.* 94.

But, if Matter of Record is only Conveyance, it is ſufficient if it be ſummarily alledged. *Co. Lit.* 303. *a.*

As, in *Assumpsit*, to indemnify his Bail, if it shews that he was Bail in an Action in the Court of *Oxford*, in which *taliter processum fuit*, that the Defendant there was condemned, it is sufficient, without setting out the whole Record; for it is but Inducement. *Per* 2 *J. Fenner cont. Yel.* 16.

So, in an Action for an Escape on a *Capias Utlegat'*, it is sufficient to begin, *Quod cum recuperasset, &c.* without setting out the whole Record; for it is only Conveyance to the Action. *R. Cro. El.* 877. *Lut.* 111.

So, in *Assumpsit* to indemify, it is sufficient to shew, *Quod implacitasset et recuperasset*, without alledging how. *R.* 2 *Cro.* 10, 46.

So, in an Action for a Deceit, Conspiracy, *&c.* founded on a Record, it is sufficient to begin, *Quod cum recuperasset.* 2 *Cro.* 567.

So, in Debt upon a Judgment in an Inferior Court not of Record, it is sufficient to say, *Quod cum recuperasset*, without shewing the Plaint or Process. *R. after Verdict. Sho.* 71.

So, in an Action, where the Record is not Inducement, but the very Foundation: As, in Debt on a Judgment, it is sufficient to begin, *Quod recuperasset. R.* 2 *Cro.* 567.

So Proceedings and Sentences in the Ecclesiastical Court may be summarily alledged: As, that there was a Divorce between such Parties, for such a Cause, before such a Judge, *concurrentibus iis* quæ *in Jure requiruntur. Co. Lit.* 303. *a. D. Hob.* 296. *Cro. Car.* 162. *R.* 2 *Cro.* 351.

That *A.* sued in the Spiritual Court for a Portion of Goods, *et taliter processum fuit*, that the Judge decreed, *&c. Lut.* 304.

But it is not sufficient to alledge generally, *concurrentibus iis* qui *in Jure requiruntur. D. Hob.* 296.

Nor is it sufficient to alledge *taliter processum* in the same Court, without saying in what Place the Court was held; for tho' the same Court shall be intended the same as to Jurisdiction, it shall not be intended to be held in the same Place. *Lut.* 305.

So, if the Defendant justifies the Taking of Ship as a Prize, and that it was condemned in the Admiralty, it is not sufficient, without saying how it was a Prize, and before what Judge, and where it was condemned. *R. Sho.* 6. *Carth.* 32.

[So if in Justification in Trespass for carrying away Plaintiff's Goods, Defendant pleads Process of an inferior Court, directed to the Bailiffs of the Borough, being Officers of the Court, and that he, being a *Bailiff and Officer of the Court*, by Virtue thereof, took, *&c.* it is bad. *Watkins* v. *West, T.* 2 *G.* 2. *Ld. Raym.* 1530.]

(E. 19.) When Estates shall be specially alledged.

So the Commencement of particular Estates ought to be specially shewn. *Co. Lit.* 303. *b. Vide infra.*

As, if the Defendant pleads an Estate for Life.

So, if he pleads, that *A.* was seised for Life, Remainder to *B.* in Tail, Remainder to *B.* in Fee; and that *A.* and *B.* demised to him, it is not good, without shewing the Commencement of the Estate for Life. *Dub.* 1 *Leo.* 177. *Cro. El.* 153, 4.

That Husband and Wife seised to them and the Heirs of the Husband demised, *&c. Semb. Cro. El.* 112.

So the Commencement of an Estate Tail, generally, ought to be shewn. *Co. L.* 303. *b.*

In a Bar, tho' it need not in a Count. *Semb. Cro. Car.* 571. *Jon.* 453.

So, if he pleads a Confirmation by Patron and Ordinary, tho' he need not shew what Estate the Patron has, yet, if he pleads, that he has for Life, he ought to shew how it commenced. *R. Cro. El.* 18.

So, if a Man pleads a Term for Years, he ought to shew the Commencement of the Term.

As, in an Action for Land, or Trespass upon the Land, in which the Title to the Land may come in Question, if the Defendant justifies under a Term for

Years, it is not ſufficient to ſay, *Quod poſſeſſionatus fuit* of the Term, without ſhewing the Commencement of the Term. *Agr.* 2 *Mod.* 70. *R. Carth.* 444.

[So if Defendant in Treſpaſs *quare clauſum, &c.* juſtifies under a Leaſe from a Tenant for ninety-nine Years, he muſt ſhew the Commencement of that Eſtate for ninety-nine Years, tho' the original Leaſe is in the Hands of Plaintiff. *Johns* v. *Whitley*, *P.* 10 *G.* 3 3 *Wilſ.* 65.]

So, in Treſpaſs for the Taking of a Horſe, *&c.* if the Defendant juſtifies under a Term, he ought to ſhew the Commencement of his Eſtate. *R. cont.* For here it is alledged only as Inducement to his Plea. *Cro. Car.* 138. 2 *Mod.* 70. 3 *Mod.* 132. *R. acc. Lut.* 1492. *D. Lut.* 1165. For the Title may come in Queſtion. *Per Pol.* 3 *Mod.* 132. *Vide ante*, (C. 41, 43.)

So, if a Man pleads a Tenancy at Will, he ought to ſhew how he has it, *viz.* by Demiſe, as a Copyholder, or as Tenant at Sufferance. *Bro. Plead.* 85.

So the Commencement of a Copyhold Eſtate ought to be ſhewn. *R.* 2 *Cro.* 103. *R. Cro. Car.* 190. *Vide Copyhold*, (P. 4.)

Tho' it be in a Juſtification to a Treſpaſs, as *Damage-feaſant*. *R.* 4 *Mod.* 346.

Tho' it be a Copyhold in Fee. *R.* 2 *Cro.* 103. *Cro. Car.* 190. *R.* 4 *Mod.* 346.

But it is ſufficient to ſhew the Copy of the *laſt* Admiſſion. *R.* 2 *Cro.* 103.

And the Omiſſion is only Form, and aided on a General Demurrer. *Cont.* 2 *Cro.* 103. *R. Cro. Car.* 190.

But it need not be ſhewn where it is alledged as Inducement: As, in Treſpaſs in his Cloſe, if the Defendant pleads, that he was poſſeſſed for Years of the adjoining Cloſe, and the Plaintiff ought to repair the Fences, and thro' the Want of Repair his Cattle eſcaped, it is good, without ſhewing the Commencement of the Eſtate; for the Intereſt of the Land cannot come in Queſtion. *R. Yel.* 74. *Co. Lit.* 303. *Vide ante*, (C. 43. E. 10.)

So, if the Plaintiff ſhews, that Husband and Wife, ſeiſed to them and the Heirs of the Husband, demiſed to him, and the Defendant obſtructed his Watercourſe, he need not ſhew the Commencement of the Eſtate of the Wife; for it is only Inducement. *R. Cro. El.* 112.

So, if a Man ſhews a Grant by Copy of a Reverſion after the Death of *A.* and that *A.* is dead, he need not ſhew the Grant to *A.* for it is only Conveyance. *R.* 2 *Cro.* 52.

(E. 20.) When not

But the Commencement of Eſtates in Fee need not be ſhewn. *Co. L.* 303. *b.* *Cro. Car.* 571.

So a Man may plead Seiſin of a Reverſion in Fee after an Eſtate for Life, without ſhewing the Commencement of the Eſtate. 1 *Sand.* 250, 260.

So the King, ſeiſed *in Jure Coronæ*, need not ſhew how the Eſtate came to him, if he ſhews, that his Anceſtor was ſeiſed in Fee; for it ſhall be intended to have Continuance. *R. Bridg.* 8.

So the Commencement of an Eſtate-Tail need not be ſhewn in a Count: And therefore in Debt for Rent, if the Plaintiff counts that his Father was ſeiſed in Tail and made a Leaſe, and that the Reverſion deſcended to him as Heir of his Body, without ſhewing the Commencement of the Entail, it is good. *R. Cro. Car.* 571. But antiently it was ſhewn. 4 *Mod.* 419. And *R.* that a Verdict ought to ſhew it. *Cro. El.* 407.

So, in an Inquiſition on the *St. Weſt.* 2. 46. againſt thoſe who throw down Incloſures, it need not be ſhewn when the Eſtate, which *A.* (who incloſed) had, commenced. *R. Carth.* 115.

(E. 21.) It ſhall ſhew by what Title. *Vide Ante*, (C. 34, &c.)

If a Man pleads or alledges any Eſtate, he ought to ſhew by what Title he has it, and it is not ſufficient in a Bar to alledge only a Poſſeſſion. 2 *Cro.* 52. *Yel.* 74. 1 *Rol.* 13. *Vide ante*, (C. 39.)

Except where it is alledged as Inducement: As, in Treſpaſs for an Aſſault, if the Defendant ſays, that he was poſſeſſed of a Houſe for Years, and the Plaintiff

Plaintiff disturbed him, for which Reason *molliter Manus impoſuit, &c.* it is ſufficient, without ſhewing by what Title he was poſſeſſed. *R. Cro. Car.* 138. 4 *Mod.* 420. *Vide ante*, (E. 10.)

In an Action upon the Caſe by the Leſſee of a Tenant for Life, it is not neceſſary to ſhew the Commencement of the Eſtate for Life. *R. Cro. El.* 112. *R. Ibid.* 113.

(E. 22.) In what Right ſeiſed. *Vide Ante*, (C. 35.)

So, if he alledges, that he was ſeiſed, he ought to alledge of what Eſtate he was ſeiſed. *Cont.* 1 *Jac.* 2. *But afterwards* 8 *W.* 3. *R. acc. Lut.* 1316. *Semb.* 5 *Mod.* 72, 150. *R. Lut.* 1232. *Carth.* 9.

So, if Perſons, who conſtitute a Body Politick, are named by their proper Names, it is not ſufficient to ſay, that they are ſeiſed, without ſaying, in Right of the Corporation. *Pl. Com.* 103. *a.*

So Perſons ſeiſed to the Uſe of an Hoſpital ought to plead Seiſin *in Jure Hoſpital'.*

So Perſons incorporated to the Uſe of an Hoſpital ought to plead Seiſin *Jure Incorpor' ſuæ*; for *Jure Hoſpital'* is not good. *R.* 10 *Co.* 34. *a.*

So a ſole Corporation ought always to plead Seiſin in his Corporate Right. *R.* 2 *Lev.* 68. *Pl. Com.* 103. *a.*

And the Omiſſion will be bad on a General Demurrer. *Per Powel, Lut.* 1232.

But an Abbot or Prior, *&c.* and Convent need not ſay in what Right they are ſeiſed; for being Perſons dead in Law, they cannot be ſeiſed, but in Right of their Houſe. *Pl. Com.* 102. *b. Dub. Sho.* 63.

So a Corporation named by their Corporate Name need not ſay, *quo Jure*, they are ſeiſed; for it cannot be otherwiſe intended: As, if a Mayor and Commonalty plead Seiſin, it is ſufficient, without ſaying *Jure Corporat'.* 1 *Leo.* 153.

If *A.* Maſter of a College and his Fellows plead Seiſin, it is ſufficient, without ſaying *Jure Collegii. R. Pl. Com.* 102. *b. R. Cro. El.* 232.

So, if by the whole Plea the Manner of the Seiſin appears, it is ſufficient: And therefore, if it be alledged, that a Woman had a Term for Years and took Husband, by Reaſon whereof the Husband and Wife were poſſeſſed, it is ſufficient, without ſaying *in Jure Uxoris. R. Pl. Com.* 191. *a.*

(E. 23.) And ſhall not plead by *Que Eſtate*, *Vide Poſt*, (O. 1, &c.)

A Man cannot preſcribe to a Thing, which lies in Grant, and does not paſs without a Deed or Fine, otherwiſe than in himſelf and his Anceſtors, and not by *Que Eſtate*; for he ought to ſhew the Deed. *Co. Lit.* 121. *a.*

As, in Preſcription for a Hundred. *Bro. Que Eſtate* 9.

So he cannot preſcribe by *Que Eſtate* to a Rent. *Bro. Que Eſtate* 16, 23, 24.

Nor to a Common, Eſtovers, Acquittal, *&c. Bro. Que Eſtate* 16.

Nor to Land.

Otherwiſe, if the Rent, Common, *&c.* are appendant to a Manor, *&c.* for he may preſcribe by *Que Eſtate* to a Manor, and what is incident or appendant goes with it. *Bro. Que Eſtate* 30. *Agreed.* 1 *Mod.* 232. 1 *Vent.* 139.

So a Plaintiff generally ſhall not plead by *Que Eſtate*, except where he is in the Nature of a Defendant, as in a Bar to an Avowry, Vouchee, *&c. Hard.* 458.

Nor in a Bar to an Avowry, where the Aſſignments are traverſable. *R. Skin.* 304.

So a Corporation cannot preſcribe by a *Que Eſtate*, but only in themſelves and their Predeceſſors. *D.* 2 *Cro.* 673.

Nor a Leſſee for Years, *that he and all thoſe whoſe Eſtate, &c. Lut.* 81. for he ought to alledge the Preſcription in him, who has the Fee. *R.* 1 *Sal.* 363.

So a Man cannot plead or make Title by *Que Eſtate* to a Thing, which does not paſs without Deed. *Co. Lit.* 121. *a.*

So, in *Quare Impedit*, the Plaintiff cannot make Title to himſelf by *Que Eſtate* to Land, to which the Advowſon is appendant. *Bro. Que Eſtate* 1.

So,

So, in Treſpaſs as well as in Real Actions, the Plaintiff cannot make Title to Land by *Que Eſtate*, without ſaying how, *viz.* by Feoffment or otherwiſe. *Bro. Que Eſtate*, 18, 27.

So, in an Information for Intruſion in the *Exchequer* (in which by the Courſe of the *Exchequer* the Intruder muſt make Title againſt the King, otherwiſe he ſhall be diſpoſſeſſed) the Defendant cannot make Title to a Term by a *Que Eſtate*. *Dy.* 238. *b.*

But a Defendant may plead by a *Que Eſtate*, when the Plaintiff cannot. *Bro. Que Eſtate*, 1, 27, 40. (E. 24.) When he may plead by *Que Eſtate*.

So a Plaintiff in *Replevin* in Bar to an Avowry; for he is in the Nature of a Defendant. *Co. Lit.* 121. *a. Bro. Que Eſtate*, 1, 3, 20, 47.

As, if a Tenant or Defendant pleads a good Bar; as a Feoffment, Releaſe, Recovery, *&c.* by *A. Que Eſtate* he hath, it is good, without ſaying how he had the Eſtate; for it is not material to the Bar. *Bro. Que Eſtate*, 34.

So a Plaintiff may claim a Thing, which lies in Grant, by a *Que Eſtate*, when it is only Conveyance to the Thing in Demand: As he may ſay, that he and all thoſe *quor' Stat' habet* in a Hundred have had a Leet, Time whereof, *&c.* tho' a Hundred does not paſs without Deed; for it is only Conveyance to the Leet, which is demanded. *Co. Lit.* 121. *a. Semb.* 2 *Leo.* 74.

So he may preſcribe that a Corporation, and all thoſe whoſe Eſtate they have in a Houſe, have had a Way, *&c.* tho' a Corporation cannot have without Deed; for it is only Conveyance. *Per* 3 *J.* 2 *Cro.* 673. *Vide* 2 *Vent.* 139.

So a Plaintiff may alledge a *Que Eſtate*, when the Title is not in Queſtion: As, in Treſpaſs, if the Defendant juſtifies the Taking for Rent due from the Plaintiff, he may ſay that the Lord enfeoffed *A. Que Eſtate* he himſelf has, to hold by 3 *s.* Rent; for the Plaintiff is allowed Tenant, and the Title to the Land is not in Queſtion. *Bro. Que Eſtate* 6, 17.

So he may claim a Thing as appurtenant to a Manor, by a *Que Eſtate*, tho' not of itſelf: As, Toll, Common, *&c.* *R.* 1 *Mod.* 231.

So he may plead *Que Eſtate* in a Stranger: As the Plaintiff in *Replevin* may plead a *Que Eſtate* in the Avowant in the Seigniory. *Co. Lit.* 121. *a. Bro. Que Eſtate* 2, 12, 21, 26, 37.

An Avowant for Rent on a Leaſe to *A.* may plead *Que Eſtate* the Defendant has, *R. Salk.* 562. *Hard.* 459.

So he may plead Title by a *Que Eſtate* to an Inheritance or Freehold. *Hard.* 459.

So he, who comes to an Eſtate *in the Poſt*, may plead by a *Que Eſtate*: As, a Diſſeiſor, Abater, Intruder. *Co. Lit.* 121. *a.*

So a Recoveror. *Co. Lit.* 121. *a. Bro. Que Eſtate* 41, 48.

So a Man ſhall plead Title to an Eſtate in Fee by a *Que Eſtate*. 40 *Aſſ.* 28.

So to an Eſtate Tail, with an Averment of the Life of Tenant in Tail. *Co. Lit.* 121. *a. Bro. Que Eſtate*, 7, 28, 29, 31.

So to an Eſtate for Life, with an Averment of the Life of the Tenant. *Co. Lit.* 121. *a. Bro. Que Eſtate* 46. *Hard.* 459.

So, in the Caſe of the King, where the Plea goes in Diſcharge of a Debt aſſigned to the King, and ſhews the Eſtate out of the Debtor before the Aſſignment. *R. Hard.* 459.

But generally he ſhall not plead a Title to a Term for Years by a *Que Eſtate*: *Co Lit.* 121. *a.*

As, to ſay, that *A.* being ſeiſed demiſed to *B.* for Years, *Que Eſtate* he has. *R. Dyer* 238. *b.* for he ought to ſhew all mean Aſſignments. *R. Raym.* 389.

Nor to an Eſtate at Will. *Co. Lit.* 121. *a.* for it cannot be aſſigned. *Bro. Que Eſtate* 38.

Yet a Man may avow for Rent on a Leaſe for Years made to *A. Que Eſtate* the Plaintiff has, without ſhewing all mean Aſſignments; for he is a Stranger to the Aſſignments which might be without Deed. *Semb. Cro. El.* 22.

So he may have Debt for Rent or Waſte againſt an Aſſignee, and declare on a Leaſe to *A. Que Eſtate* Defendant has, without ſhewing the mean Aſſignments. *R. cont. Cro. El.* 22. *R. acc.* 1 *Sid.* 298. 1 *Lev.* 190.

So he may have Covenant againſt the Aſſignee of a Term granted to *A. Que Eſtate* the Defendant has. *R.* 3 *Lev.* 19.

So, if the Defendant pleads a Leaſe for Years to *A. Que Eſtate* he has, and the Plaintiff does not demur, but traverſes the Leaſe to *A.* whereby the Aſſignment is admitted, it is good. *R. Dy.* 238. *b.*

So, if the Plaintiff makes Title to a Term for Years in himſelf by a *Que Eſtate*, it ſhall be aided on a General Demurrer. *Semb. Ray.* 389.

If a *Que Eſtate* be pleaded, it ought to be alledged in the Plaintiff or Defendant himſelf, as, to ſay the Plaintiff and all *quorum Statum habet. Co. Lit.* 121. *b.*

For, if it be alledged in One in a meſne Conveyance, it is bad. *Semb. Co. Lit.* 121. *b. Bro. Que Eſtate*, 8, 19, 49.

But a Woman, Tenant in Dower, may preſcribe that her Huſband and his Anceſtors, *Que Eſtate* ſhe has in the Seigniory, were, *&c.* tho' the Huſband had a Fee and ſhe not. *Bro. Que Eſtate*, 10.

[Freehold Tenant of a Manor muſt plead Preſcription, and by way of *que Eſtate*; and not by way of Cuſtom, which is only for Copyholders. *Thompſon* v. *Roberts*, *H.* 5 *G.* 2. *Fort.* 339.]

(E. 25.) When he ſhall plead to Covenants ſpecially.

If a Man pleads to an Action of Covenant, where any of the Covenants are Negative, he ought to plead to them ſpecially; for the Negative cannot be performed. *Co. Lit.* 303. *b. R. Cro. El.* 691. *Mo.* 856. *Hob.* 13.

As, if a Covenant be to proceed on a Voyage *et quod non deviaret*, he ought to plead ſpecially that he did not deviate. *R.* 1 *Sid.* 87.

So, if the Condition of a Bond be in the Negative, the Defendant ſhall plead to it ſpecially. 10 *H.* 7, 12. *b.*

So, if the Condition be for Performance of Covenants, and ſome of the Covenants are in the Negative, he ought to plead Performance ſpecially. *Semb. Dy.* 373. *a. Pal.* 70.

But general Performance ſhall be aided on a general Demurrer. *R. Cro. El.* 232. 1 *Leo.* 311. *Vide Poſt*, (E. 26.)

So it ſhall be aided by the Plaintiff's Replication, *that he has not performed*, *&c. D. Sho.* 1.

So, if any of the Covenants are in the Disjunctive, he ought to ſhew which he has performed. *Co. Lit.* 303. *b. Lut.* 581. 10 *H.* 7. 12. *b. R.* 2 *Cro.* 560. *Pal.* 70. *Sav.* 120.

So, if the Condition be to pay at four Days, or within ſix Months after each Feaſt. *Per* 2 *J. Cro. Car.* 421.

And if he does not, it will be bad on a general Demurrer, for the Court do not know what Part is performed. *R.* 1 *Leo.* 311. *D. Cro. El.* 232. *Vide Poſt*, (E. 26.)

So, if the Condition of a Bond requires ſeveral Things to be done, is is not ſufficient to ſay *Quod performavit Omnia*, *&c.* tho' all are in the Affirmative; but he ought to anſwer ſpecially to every Particular mentioned in the Condition. *R.* 1 *Lev.* 303. *Vide Poſt*, (2 W. 33.)

So, if an Act required by a Covenant is to be done by a Stranger to the Covenants: As, if *B.* covenants that *A.* and his Wife ſhall levy a Fine. *Per melior' Opinion'*. 2 *Roll.* 159. *R.* 2 *Cro.* 559, 560. *Dub. Pal.* 70.

That *A.* ſhall render a juſt Account. *R. Sho.* 1.

And it ſhall not be aided by the Plaintiff's Replication, *that he has not performed*. *Ibid.*

So, if a Covenant requires an Act on Record, he ought to ſhew it ſpecially. *Co. Lit.* 303. *b.*

As, if the Covenant be that *A.* ſhall levy a Fine. *R.* 2 *Roll.* 159. *R.* 2 *Cro.* 560. *R. Pal.* 70.

That the Defendant ſhall become nonſuit in all Actions by him, he muſt ſhew ſpecially that he was nonſuit; for it cannot be tried but by the Record. *R.* 13 *H.* 7. 19. *b. Acc.* 10 *H.* 7. 12. *b.*

So, if the Condition be to make a Bond, Releaſe, *&c.* it is not ſufficient to ſay that he has done it, without ſhewing it, whereby the Court may judge whether

ther it be ſufficient. *R. Sal.* 498. *Vide Kit.* 223. *b. Lut.* 421. *Vide Poſt*, (2 V. 13.)—*Ante*, (E. 5. C. 58, *&c.*)

So, if the Condition of a Bond be to perform ſuch a Thing, or pay ſuch a Sum, it is not ſufficient to plead Payment generally without ſhewing how or at what Time, ſo that Iſſue may be joined thereon. *R.* 2 *Cro.* 360.

If the Condition be, that he ſhall prove a Debt paid, it is not ſufficient to ſay that *A.* and *B.* proved it, without ſaying how. *R. Bend.* 66.

So, if it be to perform a Will, it is not ſufficient to plead Performance, without ſhewing the Will and how he has performed it. *R.* 2 *Cro* 360. 2 *Bul.* 267.

If he pleads that a Patent became void, he ought to ſhew how. *R. Skin.* 303.

So, if a Condition be to indemnify, Plea *quod exoneravit* is not good, without ſhewing how. *R.* 2 *Cro.* 363. *R.* 2 *Cro.* 165, 634. *R. Mar. pl.* 200. *D.* 2 *Co.* 4. *a. Semb. Lut.* 428. *R. Cro. El.* 916. *Mo.* 857.

Otherwiſe, if he pleads in the Negative *Non Damnificat'*. *R.* 2 *Cro.* 363, 634. *Mar. pl.* 200. 2 *Co.* 4. *Vide Poſt*, (2 W. 33.)

So if a Covenant or Condition be for quiet Enjoyment, it is not ſufficient to plead Diſturbance, without ſhewing how he was diſturbed. *Semb.* 2 *Vent.* 278.

And that it was by an Elder Title. *R. Hob.* 35. *Win. Ent.* 120. *R.* 2 *Cro.* 315, 444. *R. Cro. Car.* 5. 4 *Co.* 80. *Vau.* 120. *Vide ante*, (C. 49.)

But it is not bad but upon a Special Demurrer. *Lut.* 428.

And ſhall be aided after Verdict. *R.* 2 *Mod.* 213.

(C. 26.) When generally.

But where all the Covenants are Affirmative, it is ſufficient to ſhew Performance generally. *Co. Lit.* 303. *b.* 10 *H.* 7. 12. *b.*

So, in Debt on a Bond to perform Covenants in an Indenture, it is ſufficient to plead Performance generally, if they are all in the Affirmative. *R. Cro. El.* 749. 2 *Sand.* 411. 1 *Lev.* 303. *Dy.* 373. *a.* *Vide Poſt*, (2 V. 13.)

Or, if any are in the Negative, but the negative Covenants are all void and contrary to Law; for the Court will take Notice that thoſe in the Negative are contrary to Law. *R. Mo.* 856. *R. Hob.* 13.

Or, if the Negative be but an Affirmance of a precedent affirmative Covenant. 1 *Sid.* 87.

So, tho' to an affirmative Covenant negative Words are added of the ſame Import. *Adm.* 1 *Sid.* 87.

So, if he covenants that *A.* ſhall quietly enjoy without Interruption and diſcharged and acquitted of all Incumbrances, he may plead *quod performavit* generally, tho' it is not ſo well. *R. Lut.* 608.

So, if a Covenant be to make further Aſſurance, be it by Fine, Feoffment, *&c.* as ſhall be adviſed, it is ſufficient to plead *performavit* generally, tho' it is not ſo well. *R. Lut.* 609.

So, the Plaintiff to a *plene Adminiſtravit præter* a Debt on a Bond may ſay, that the Bond was for ſuch a Purpoſe and that he has performed it, without ſaying that this was the Whole of the Condition. *R. Lut.* 1637.

So where a Covenant is Affirmative and comprehends Multiplicity of Matter, to avoid Prolixity the Defendant may plead Performance generally, without ſhewing how, and the Plaintiff ſhall aſſign a particular Breach: As, in Debt on a Bond with a Condition to deliver the Tallow of all Beaſts killed by him; it is ſufficient to ſay that he has delivered all the Tallow, *&c.* without alledging how much he has delivered, or how many Beaſts he has killed. *Cro. El.* 749. *Vide Poſt*, (2 V. 13.)

So on a Bond to pay all Rents received, it is ſufficient to ſay that he has paid all, without ſaying what Sum or how much he has received. *R. Cro. El.* 749. *R.* 1 *Sid.* 334.

So on a Bond to deliver all Evidences, or to aſſure all his Lands. *Cro. El.* 750.

So, where a Man covenants to diſcharge all Bonds. *R. Cro. El.* 916.

Or to acquit of all Eſcapes, Fines, *&c.* it is good without ſaying how. *R. Mo.* 857.

Or

Or to indemnify againſt the King for all Receipts as Collector. *Semb. Cro. El.* 253.

So, if a Man pleads Performance generally when ſome of the Covenants are in the Affirmative and others in the Negative, it ſhall be aided on a general Demurrer. *R. Cro. El.* 232. *Vide ante*, (E. 25.)

Otherwiſe, if ſome of the Covenants are in the Disjunctive; for the Court cannot judge, what Part he has performed. *D. Cro. El.* 232. *Vide ante*, (E. 25.)

And, if he pleads Payment or Performance generally to the Condition of a Bond, it is not aided on a general Demurrer. *R. Mar. pl.* 200. *R. cont.* 1 *Lev.* 194.

(E. 27.) The Form of a Plea in Bar.

Every Plea in Bar muſt begin with the Defence. *R. Yel.* 210. *Vide for this in Abatement*, (I. 16.)

If a Plea goes only to Part, it muſt aſcertain the Part of the Declaration to which it is applied: As, in Debt for Rent for ſeveral Years, if the Defendant ſays, *quoad* 20*l.* Parcel of the Rent *Nil debet*, and does not ſhew when the 20*l.* was due. *R.* 1 *Sid.* 338.

In *Aſſumpſit* on ſeveral Promiſes, if the Defendant pleads *quoad* all except 4*l.* *Non Aſſumpſit*, and a Tender *quoad* the 4*l.* and does not ſhew upon which Promiſe the Tender was made, it is therefore bad. *R. Lut.* 241.

If the Plea admits the Cauſe of Action, and avoids it by a Diſcharge or Matter *Ex poſt Facto*, he muſt ſay *Quod* Plaintiff *Actionem non, &c. R. Sal.* 516.

But where there was no Cauſe of Action, he may ſay *Onerari non debet. Sal.* 516.

(E. 28.) How it ſhall conclude.

(E. 28.) To the Action.

Every Plea ſhall have its proper Concluſion; and therefore a Plea in Bar ſhall conclude to the Action. *Co. Lit.* 303. *b. Vide Abatement*, (I. 12.)

But ſometimes a Concluſion is aided on a general Demurrer; as, if it be only informal. *D. Hob.* 298, 321.

Or prays Judgment of the Writ, where it ſhould be, *ſi ſerra reſpondue. Semb. Lat.* 179.

If a Plea begins in Abatement, and concludes to the Action, it ſhall be a Plea in Bar. *Sho.* 4.

(E. 29.) To the Record.

And if a Matter of Record be pleaded, it ſhall conclude *prout patet per Recordum.* 1 *Lev.* 211. *R.* 3 *Lev.* 334. *Vide Ante*, (C. 82.)—*Poſt*, (O. 17.)

So, if a Matter be pleaded proveable only by a Record. *R. Lut.* 163.

And if it concludes, *Et hoc paratus eſt verificare*, when it ought to be *prout patet per Recordum*, it is bad. *R. Ray.* 50.

Or, if it concludes to the Country, when it ſhould conclude to the Record. *R.* 1 *Leo.* 90.

Or, if it adds Matter of Fact, and then concludes to the Country. *R. Lut.* 1272.

If ſeveral Records are pleaded, it muſt conclude every one *prout patet per Recordum* of ſuch Court; for, after pleading all, to ſay, *prout pat' per Recorda prædicta*, is bad, at leaſt if it does not ſay, *prout pat' per ſeparal' Recorda prædicta. Per* 2 *J.* 2 *Cro.* 626. But *per ſeparal' Recorda* is good. *R.* 1 *Lev.* 200. 1 *Sid.* 333.

But where a general Statute is pleaded, there is no Need to ſay *prout patet per Recordum*; for the Judges take Notice of it. *R. Hard.* 335.

So, if the Defendant *profert* the Record by his Plea, he need not ſay *prout patet, &c. Skin.* 520.

[If Matter of Record be pleaded by way of Dilatory, if of another Court, it muſt be *ſub pede ſigilli*; if of the ſame Court, not. *Curwen* v. *Fletcher*, *P.* 8 *G. Str.* 520.

[To Action on the Caſe, if Defendant pleads a Recovery, and Plaintiff replies *nul tiel record*, and concludes with Averment, it is good, eſpecially if it is a Record of another Court; but (*Semb.*) he may alſo conclude with giving a Day to Defendant to produce Record. *Sandford* v. *Rogers*, *H.* 33 *G.* 2. 2 *Wilſ.* 113.]

Yet, by the *St.* 4 & 5 *Ann.* 16. No Exception ſhall be taken for Want of *Hoc paratus eſt verificare per Recordum*, or *prout patet per Recordum*, unleſs ſpecially ſhewn for Cauſe of Demurrer.

And it was before aided on a general Demurrer; for the Party might ſay, *Nul tiel Record*, notwithſtanding the Omiſſion. 1 *Sal.* 1.

So it is not neceſſary to conclude *prout patet per Recordum*, where the Plea is in the Negative. *Sal.* 520. *Vide Poſt*, (E. 33.)

When it ſhall conclude to the Country. *Vide Poſt*, (E. 32.)

(E. 30.) Special Concluſion.

If a Plea does not avoid the Plaintiff's Demand but by Argument, there ought to be a ſpecial Concluſion: As, in a *Scire facias* for the Arrears of an Annuity againſt a Parſon, if the Defendant pleads that he has reſigned, it is not good, without ſaying, *Et ſic* not Parſon. *Kit.* 214. *b.* 220. *b.* (E. 30.) *Et ſic.*

So, in Debt for Rent, or upon a Contract, if the Defendant pleads Payment in the ſame County, it is not good without concluding, *Et ſic nil debet*. *Kit.* 220.

So, in Debt on a Bond, if the Defendant pleads ſpecial Matter, which proves the Bond to be void, he ought to conclude, *Et ſic non eſt Factum*: As, if he pleads Raſure or Interlineation. *Ibid.*

That the Obligor was a *Feme Covert*, &c. *Kit.* 220. *b.*

That the Defendant is unlearned, and it was read in other Form. *Kit.* 220.

But if the ſpecial Matter of the Plea be a ſufficient Bar, there is no need to ſay, *Et ſic*: As, in Debt for Rent, Payment, or Levy by Diſtreſs, in another County is ſufficient, without concluding, *Et ſic nil debet*. *Ibid.*

So, if the Defendant acknowledges the Deed, and pleads a Plea to avoid it, he cannot conclude, *Et ſic non eſt Factum*: As, if he pleads *Dureſs*, within Age, &c. he cannot conclude, *Et ſic non eſt Factum*. *Kit.* 220. *a. b.*

If a Plea concludes with *Et ſic*, &c. in the Affirmative, this does not waive the ſpecial Matter. *Co. Lit.* 303. *b.*

As, if he pleads ſpecially, that *A.* was born between *B.* and his Wife before their Marriage, *Et ſic* a Baſtard. *Pl. Com.* 14. *b.*

In *Formedon*, if the Tenant pleads *Ne dona*, to which the Plaintiff replies, Recovery in Value by reaſon of a Warranty, *Et iſſint dona*. *Pl. Com.* 15. *a.*

So, if he pleads ſpecial Matter, and concludes with (*Et ſic*) on the General Iſſue, this does not waive the ſpecial Matter: As, if he pleads *unlearned, and read in other Form*, &c. *Et ſic non eſt Factum*. *Ibid.*

But generrlly, where the Concluſion (*Et ſic*) goes to the Point of the Writ or Action the ſpecial Matter is waived. *Co. Lit.* 303. *b.*

Or, if a Plea concludes with (*Et ſic*) in the Negative. *Co. Lit.* 303. *b.* *Pl. Com.* 15. *a.*

So, in Treſpaſs, if the Defendant juſtifies the Treſpaſs in another Place, or at another Day, he ought to conclude *which is the ſame Treſpaſs*. *R.* 1 *Bul.* 138. 9 *H.* 6. 30. *a.* (E. 31.) *Quæ eſt eadem.*

So, in Conſpiracy, if the Defendant juſtifies, he ought to conclude, that it is the ſame Conſpiracy. *Kit.* 237. *b.*

So, in an Action for an Eſcape in *London*, if the Defendant juſtifies by a Re-taking on freſh Suit in *Surry*, which is the ſame Eſcape, it is good. *Lat.* 201.

So, in *Quare Impedit* on an Avoidance by Deprivation, if the Defendant pleads a Deprivation, after which the Church lapſed, &c. he ought to conclude, *which is the ſame Deprivation*. *Dy.* 293. *a.*

So, in Treſpaſs and Impriſonment till he paid 10*s.* if the Defendant juſtifies till Payment of 11*s.* *Skin.* 664.

If the Defendant juſtifies in another Place and ſays, *Which is the ſame, &c.* it will be good, where the Place is not material, without a Traverſe. *R. Cro. El.* 667.

And if the Defendant juſtifies upon another Day, and concludes *Which is the ſame, &c.* when the Day is not material, it is good without a Traverſe of the Day. *R.* 1 *Lev.* 241. *R. Cro. Car.* 228. *R. Lut.* 1457. *Semb.* 2 *Jon.* 146. *R. Sal.* 641.

And, if he adds a Traverſe, which is defective, it does not prejudice. *Sal.* 641, 2.

But, if he juſtifies at the ſame Day, and in the ſame Place, he need not ſay *Which is the ſame. R. Skin.* 387.

So, if the Defendant does not juſtify the Treſpaſs, but only excuſes himſelf, he ought not to ſay *Which is the ſame.*

So, in Treſpaſs for falſe Impriſonment, if the Defendant pleads, that he brought the Plaintiff to *S.* with his Conſent, he cannot ſay *which is the ſame Impriſonment*; for it is no Impriſonment, if it be not againſt his Will. *Kit.* 237. *a.*

Or, if he pleads, that he adviſed *A.* being in Fear of his Life from the Plaintiff, to go to a Juſtice of Peace for a Warrant, and by ſuch Warrant he was arreſted, he cannot ſay, *Which is the ſame, &c.* for he was not impriſoned by the Defendant but by *A. R.* 12 *H.* 7. 14. *b.*

So if the Defendant, in Debt upon a Bond, pleads *per Minas*, if the Plaintiff replies that he ſaid, *if the Defendant would not give him a Bond for the Rent due he would ſue him*; he ought not to ſay, *Which is the ſame Menace*; for it is not a Menace, but lawful. *Kit.* 237. *b.*

So, in Maintenance, if the Defendant ſays, that he fee'd Counſel, he cannot ſay, *Which is the ſame, &c.* for this is no Maintenance. *Ibid.*

So, in Treſpaſs for an Aſſault, Battery, and Wounding, if the Defendant juſtifies a Taking by a Warrant, *Which is the ſame Aſſault, Battery and Wounding*, it is not good; for this does not go to the Wounding. 21 *H.* 7. 39. *Vide Poſt*, (3 M. 15.)

In Treſpaſs for an Aſſault and Impriſonment, it is not ſufficient to ſay, that the Defendant ſhewed the Plaintiff to an Officer, who had Proceſs againſt him, who thereupon arreſted him, without ſaying that he requeſted the Officer to arreſt; for, without ſuch Requeſt, it is no Confeſſion of the Impriſonment. *R.* 4 *Ed.* 4. 36. *a.*

In Treſpaſs for taking and carrying away his Goods, if the Defendant juſtifies a Taking in Execution and Removal *Which is the ſame*, it is no Anſwer to the Carrying away, without ſaying to what Place they were removed, and where left. *R. Lut.* 1486.

So a Plea, which is a general Bar, ſhall conclude to the Action generally: As, a Fine with Proclamations. *R. Dal.* 68.

But where the Matter of the Plea is a Bar only by *Eſtoppel*, he ought to rely on the *Eſtoppel*; for it is a ſpecial Concluſion between the Parties: As, if he pleads a collateral Warranty. *Dal.* 68.

(E. 32.) When it ſhall conclude to the Country.

When there is a compleat Iſſue between the Parties, *viz.* a direct Negative and Affirmative, the Plea ſhall conclude to the Country: As, in *Aſſumpſit*, if the Plaintiff declares upon a Submiſſion to an Award, and that ſuch an Award was made, and that the Defendant has not performed it, if the Defendant pleads, *No ſuch Award*, he ought to conclude to the Country. *R.* 2 *Sand.* 337.

So, if the Plaintiff alledges, that the Award was tendred to the Parties, *&c.* and the Defendant anſwers, that it was not tendred *Modo et Forma*, he ought to conclude to the Country. *R.* 2 *Sand.* 190. *Lut.* 528.

So, in Debt on a Bond, with a Condition to pay all Expences, if the Defendant pleads that he paid all, and the Plaintiff replies, *that he has not paid*, he ought to conclude to the Country. *R. Ray.* 98.

So, if the Defendant pleads, *Plene administravit*, and the Plaintiff replies, *Assets at the Time of the Original*, he ought to conclude to the Country. *Semb. Lut.* 101. *R. Yel.* 137.

So, if the Plaintiff in an *Audita Querela* alledges Tender at the Day, and no one ready to receive, and the Defendant pleads, *ready*, and traverses the Tender, it is bad; for he ought to conclude to the Country; for he should have been ready to receive at the Day, whether it was tendred or not. *R.* 2 *Cro.* 14.

Tho' the Payment by a Defeasance ought to be to a Stranger. 2 *Cro.* 14.

So, in Trover for selling a Chain of Gold, and converting the Money to his own Use, if the Defendant pleads *Non vendidit*. *R.* 1 *And.* 20.

So, in *Assumpsit*, for Payment of Money at such a Day, if he pleads *solvit ad Diem*. *R. Sal.* 516.

So in Covenant, if the Plaintiff assigns the Breach, *Quod non solvit, &c.* and the Defendant pleads, *Quod solvit*. *R. Carth.* 88.

So he ought to conclude to the Country, tho' Matter of Record be mentioned in the Plea: As, if it be alledged that the Plaintiff procured Letters Patent, and he says, that he did not procure; for the Procurement is the principal Thing. *R.* 3 *Mod.* 79.

[Plea of Bankruptcy ought to conclude to the Country. *Gery* v *Bayley*, *M.* 7 *G.* *Miles* v. *Williams*, *Fuller* v. *Byng*, *C. B. T.* 3 *G:* *Fort.* 334. *Barnes* 330.]

[If to Covenant by an Executor, Defendant pleads another Executor, who has proved, administred, and is living, Plaintiff's Replication shall conclude to the Country. *Wilkins* v. *Brown*, *H.* 18 *G.* 2. *Str.* 1220.]

[Bond that *A.* on thirty Days Demand in Writing should account and pay; Breach assigned, that *A.* did not account in thirty Days after Demand in Writing; Pleas, 1st. No Demand; 2d. (Protesting no Demand, *&c.*) that *A.* did account and pay; Replication, that a Demand in Writing was made on a Day, (naming it) and no Account by *A.* this concludes well to the Country. *Trapaud* v. *Mercer*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1022.]

So, if the Defendant pleads a Fact merely in the Negative, he ought to conclude to the Country; for a Negative cannot be averred.

So, if a Plea concludes with a special Negative to the Affirmative in the Declaration: As, in Debt on a Bond, if he pleads a special *Non est Factum*, as, a Delivery as an Escrow. *R.* 1 *Sal.* 274.

But when a Plea may have an Answer to it, it shall not conclude to the Country: As, if the Defendant pleads the Statute of Limitations, and the Plaintiff shews another Original sued out, he shall not conclude to the Country; for he cannot take away the Defendant's Liberty of answering it. *R. Lut.* 101. *R.* 4 *Mod.* 376. *Vide Action upon Assumpsit*, (H. 7.)

If the Defendant pleads *Alien Enemy*, and the Plaintiff replies, *Born at London and no Alien*. *R.* 4 *Mod.* 285.

[If Plaintiff replies, *not an Attorney*, he must not conclude to the Country. *Barker* v. *Forrest*, *M.* 9 *G.* *Str.* 532.

So, where there is not a direct Negative and Affirmative, he need not conclude to the Country: As, if an Avowant says an Office was granted to such Person or Persons as the Bishop pleased, and the Plaintiff replies in Bar, that it was granted only to One. *R.* 10 *Co.* 59. *a.*

If the Plaintiff says, that the Defendant received 20*l.* for which he did not account, the Defendant pleads that he accounted *Modo sequen' viz.* that he was robbed of it, and gave Notice to the Plaintiff. *R.* 2 *Lev.* 5.

And if a Plea does not conclude to the Country, when it ought, it is Error. *R. Yel.* 58.

Also, if a Plea does not conclude to the Country, when it ought, it is bad on a general Demurrer. *R.* 2 *Sand.* 190. *Semb. Ray.* 94, 98. *R. Cro. Car.* 164. *R. Sho.* 70.

Yet,

Yet, it was ſhewn for Cauſe of Demurrer. 2 *Sand.* 337. And it ſeems to be only Form, and not bad on a general Demurrer. *Per Hale*, 1 *Vent.* 240.

But it is bad on a ſpecial Demurrer. *R. Lut.* 21.

So, if a Plea concludes to the Country, when it ought not, it is bad. *R.* on a general Demurrer. *Lut.* 101, 1272. *R.* 1 *Sid.* 215.

Yet, if the other Party joins Iſſue, and a Verdict is obtained, it is aided by the *St.* 32 *H.* 8. *R.* 2 *Cro.* 580, 589. *R. Cro. Car.* 317. *R.* 1 *Sid.* 341.

(E. 33.) When it ſhall be averred.

All Pleas in the Affirmative ought to be averred by *Et hoc paratus eſt verificare Co. Lit.* 303. *a.*

So ought a Replication. *Cro. El.* 256.

So Pleas in Abatement. *R.* 1 *Vent.* 264. *R. Lut.* 1466.

So a Plea to an *Engliſh* Bill in the *Exchequer*. *Hard.* 160.

So a Traverſe of a particular Matter *abſque hoc*, &c. ought to conclude with an Averment, *Et hoc paratus eſt verificare.* 1 *Sal.* 4. *R.* 3 *Mod.* 203. *F-g.* 130.

Yet where *abſque hoc* compriſes all the Matter of the Plea, as *abſque tali Cauſa* does, it may conclude to the Country. *R.* 1 *Sal.* 4.

[If a Writ is pleaded, it ſhall conclude, *et hoc parat. eſt verificare. Baxter* v. *Douglas*, *H.* 8 *G. Fort.* 334.]

[So if Defendant in *indeb. aſſump.* pleads *infra ætat. Croſs* v. *Bevan*, *M.* 13 *G. Fort.* 334.]

[If a Perſon charged as Occupier of the Goods of a Debtor to the Crown, pleads that he is not Occupier, he muſt conclude with *et hoc parat*, &c. *Rex* v. *Chelſea Water-works*, *M.* 1732. *Bunb.* 331.]

[If Plaintiff in his Replication diſcloſes new Matter, the Rejoinder muſt anſwer it, and conclude with Averment. Thus, Debt on Bond, conditioned that *A.* ſhould not run away during Apprenticeſhip; Plea, *A.* did not run away; Replication, *A.* was bound for ſeven Years, and did run away before the End of them; Rejoinder, *A.* was bound for five only; it muſt conclude with Averment. *Long* v. *Jackſon*, *M.* 27 *G.* 2. 2 *Wilſ.* 8.

[If on *Scire facias* againſt Bail, Defendant pleads Principal died before Return of any *Ca. Sa.* againſt him; Replication, *Ca. Sa.* returned, and he then living, muſt conclude with Averment. If it concludes to the Country, by denying his Death, or with a Traverſe, it is bad; for it deprives Defendant of Right to rejoin, no *Ca. Sa.* And where either Party introduces new Matter, (as here the *Ca. Sa.*) the other muſt have an Opportunity of anſwering it. *Filewood* v. *Popplewell*, *P.* 30 *G.* 2. 2 *Wilſ.* 61, 65.]

[If the Plea is, that *A.* did pay all he received, and the Replication narrows it to a particular Sum, that he did receive 1400*l.* which he did not pay, it ſhall conclude with Averment. *Cornwallis* v. *Savery*, *P.* 32 *G.* 2. 2 *B. M.* 772.

But Pleas in the Negative need not be averred. *Co. Lit.* 303. *a.*

As, in *Aſſumpſit* by an Attorney for Fees, if the Defendant pleads, *No Bill delivered under his Hand* purſuant to the Statute 3 *Jac.* there is no Need of an Averment. *R. Sho.* 338.

So, to a *Scire facias* upon a Recognizance againſt Bail, if the Defendant pleads that the Judgment is pending and not determined, he need not ſay *prout patet per Recordum. R. Sal.* 520.

So an Avowry need not be averred; for it is in the Nature of a Count. *Co. Lit.* 303. *a. R. Pl. Com.* 342. *a.* 163. *a. Vide ante*, (C. 51.)

So the general Iſſue need not be averred; for it is not traverſable, but the Plaintiff ought to join Iſſue or demur. *Kit.* 219. *b.*

So a Challenge of an Array need not be averred. 27 *H.* 8. 13. *b.*

So a Demurrer need not be averred, *Et hoc paratus. R.* 1 *Leo.* 24.

[*Nul tiel record* need not be averred. *Obin* v. *Knott*, *M.* 9 *G.* 2. *Fort.* 339.]

[If Defendant in Treſpaſs for taking Trees, juſtifies under a Licence, and avers the Trees were uſed for Gates, &c. and Replication traverſes the Licence, proteſting

teſting the Trees were not uſed for Gates, it may conclude to the Country, and not with Averment. *Robinſon* v. *Raley*, *P.* 30 *G.* 2. 1 *B. M.* 316.]

Default or Omiſſion of an Averment in the Concluſion of a Plea, is but Form, and does not prejudice on a general Demurrer. *R. Lut.* 16. *Cont. Jon.* 406. *R. cont. Lut.* 1466. *Semb. acc.* 1 *Vent.* 240. *R. acc. Skin.* 340.

And now by the *St.* 4 & 5 *Ann.* 16. No Exception ſhall be taken for Want of Averment by *Et hoc paratus eſt verificare*, unleſs ſhewn for Cauſe of Demurrer.

But it is bad on a ſpecial Demurrer. *R. Lut.* 21.

(E 34.) Muſt be triable

Every Plea ought to be triable. *Co. Lit.* 303. *b.*

And therefore muſt conſiſt of Matter of Law, which is determinable by the Court; or Matter of Record, which is triable by the Record; or Matter of Fact, which is triable by the Country. 9 *Co.* 24. *b.*

And if Fact is complicated with Matter of Law, ſo that it cannot be tried by the Court, or Jury, the Plea is bad: As, if the Defendant pleads that *A. licite gaviſus fuit Bona Felon'*, it will be bad, for the Jury cannot determine whether he lawfully enjoyed, nor the Court whether he enjoyed. *R.* 9 *Co.* 25. *a.*

[And therefore, that Defendant was always ready to pay, (without pleading Tender) is bad. *French* v. *Watſon*, *T.* 30 & 31 *G.* 2. 2 *Wilſ.* 74.]

So, if the Condition of a Bond be, that he will ſhew a ſufficient Diſcharge of an Annuity, it is bad, if he pleads that he ſhewed a ſufficient Diſcharge; for the Jury cannot try whether it is ſufficient, but he ought to ſhew what Diſcharge he gave, and the Court will judge whether it be ſufficient. 9 *Co.* 25. *a.*

But where the Effect of the Words repreſents a Matter triable, it is ſufficient, tho' according to the Letter it is not triable: As, in Covenant for Enjoyment free from Arrears of Rent; Plea, that he delivered Money to the Plaintiff *ea Intentione* that he ſhould diſcharge the Arrears, will be good, tho' the Intent is not triable; for it is *tantamount* as if he had ſaid that he delivered *ad ſolvendum*. *R.* 4 *Mod.* 249.

(E. 35.) Form of Pleading.

(E. 35.) When ſeveral Defendants, &c.

If there are ſeveral Defendants, they may join in a Plea. *Sal.* 456.

Or may plead ſeverally. *Sal.* 456.

If they ſever in Plea, the Plaintiff may enter a *Non pros* againſt One, at any Time before the Record is ſent down to the Aſſizes. *R. Sal.* 457.

[In *Aſſumpſit*, if Defendants ſever in Pleading; one pleads to Iſſue, and there is Judgment againſt him, the other pleads Bankruptcy, and Plaintiff enters *nolle proſequi*: this does not deſtroy the Action againſt the firſt. *Noke* v. *Ingham*, *P.* 18 *G.* 2. *Wilſ.* 89.]

If the Defendants join in the Plea, and it is in the ſingular Number, it will be bad. *R. Lut.* 1531.

And this on a general as well as a ſpecial Demurrer. *Semb. Lut.* 1531.

If the Defendants plead ſeverally the Plaintiff may demur to One, and join Iſſue on the Other. *Cro. Car.* 243.

And may afterwards enter a *Nolle proſequi* on the Demurrer, and proceed on the other. *Cro. Car.* 243.

Or, if ſeveral Iſſues are joined, he may enter a *Nolle proſequi* as to One, before Judgment or after. *R. Cro. Car.* 243.

Tho' they are charged jointly. *Cro. Car.* 243.

If the Defendant pleads to a general Demand or Charge he ought to anſwer to every Part: As, in Waſte for cutting down twenty Oaks, the Defendant ought to ſay that he did not cut down them or any of them. *Cro. El.* 84.

But if a collateral Iſſue be tendred, it is ſufficient to anſwer in the Words of the Plaintiff: As, in Account, if the Plaintiff charges tht the Defendant re-

ceived 100 *l. ad computandum*, and the Defendant ſays that he expended the ſaid 100 *l.* it is ſufficient to ſay that he did not expend the 100 *l.* without ſaying *Nec aliquem Partem inde*, tho' if he expended Part he ought to be allowed it. *R. Cro. El.* 84.

[In Treſpaſs againſt two, if one ſuffers Judgment to go by Default, and the other juſtifies for a Diſtreſs for Rent, and Licence from the Plaintiff to ſell, and a Verdict for Defendant, Judgment ſhall be arreſted as againſt the other. *Biggs* v. *Bonger*, *M.* 11 *G.* 2 *Ld. Raym.* 1372. *Str.* 610.]

(E. 36.) Plea bad in Part is bad for the Whole.

Vide Poſt, (F. 25.)

If an intire Plea is bad in Part, it is bad for the Whole: As, in Treſpaſs if the Defendant juſtifies, as Servant to *B.* his Entry to take Care of the Cattle there, and does not ſay that he put the Cattle there, this is a good Juſtification of his Entry, but is not a Juſtification with Cattle, for if he did not put them there, he is not Guilty, and then he cannot juſtify; and the Plea being bad in Part is bad for the Whole. *R.* 1 *Sand.* 28.

In *Aſſumpſit* on ſeveral Promiſes, if the Defendant pleads the Statute of Limitations, which is a bad Plea as to one Count, where the Action does not ariſe upon the Promiſe, but not as to the other Count, it will be bad for the Whole. *R.* 1 *Lev.* 48.

In Debt againſt an Executor or Adminiſtrator, if the Defendant pleads ſeveral Judgments and *no Aſſets ultrà*; if the Plea is bad as to One of the Judgments, it will be bad for the Whole: As, if One of the Judgments was againſt the Teſtator and *B.* and he does not ſhew that the Teſtator ſurvived, for otherwiſe he ſhall not be charged with it. *R.* 2 *Sand.* 50.

In Covenant and ſeveral Breaches, if Defendant pleads *Outlawry* in Bar, which is a Bar for one Breach, and not for the others, it will be bad for the Whole. *R. Lut.* 515.

If an Attorney puts in Court a Plea notoriouſly falſe for Delay, it will be a Breach of his Oath, for which he may be fined. *Sal.* 515.

But an Attorney is not bound to ſwear his Plea, but where it is a foreign Plea. *Ibid.*

(E. 37.) When it ſhall be aided.

(E. 37.) By the Replication. *Vide Ante*, (C. 85.)

A bad Bar may be aided by a Replication: As, if the Defendant in Aſſize pleads a Feoffment upon Condition, and Entry for the Condition broken, without ſhewing the Deed, as he ought; if the Plaintiff replies, that after the Feoffment and Entry he reenfeoffed him, this Confeſſion in the Replication aids the Defect in the Bar. *Pl. Com.* 230. *b.*

So, if the Plaintiff replies, that before Entry the Defendant releaſed to him. *Ibid.*

So, in Debt on a Bond to make an Eſtate to *A.* if the Defendant pleads that he enfeoffed Another to the Uſe of *A.* which is not good without ſhewing that *A.* was a Party or had the Deed, *&c.* yet if the Plaintiff replies, that he did not enfeoff, this aids the Bar. *R. Cro. El.* 825.

So, if on a Bond to accept a Leaſe on Requeſt, the Defendant pleads *Non requiſivit*, the Plaintiff replies that he tendred a Leaſe without ſaying of what Lands, and Iſſue is joined on the Requeſt, this aids the Defect in the Replication. *R. Cro. Car.* 560.

So, if the Defendant pleads an Award, *&c.* uncertainly, and the Plaintiff makes a Replication, which imports the Award, *&c.* to have been made, it aids the Uncertainty of the Bar. *Vide Kit.* 238.

So, if the Defendant pleads a Judgment without ſaying *prout patet per Recordum*, and the Plaintiff by his Replication ſays the Judgment is fraudulent. *R.* 3 *Lev.* 311.

So, if the Plaintiff by his Replication ſhews that he has no Cauſe of Action, there ſhall be Judgment for the Defendant, tho' the Bar is defective; for the Court will judge on the whole Record: As, in Eſcape at *London*, the Defendant

pleads

pleads a Retaking upon freſh Suit at *Stoke*, the Plaintiff replies, that he was out of his View before the Retaking; this admits the Retaking on freſh Suit, and then he ſhall not have an Action for an Eſcape; tho' Retaking at another Place would be a bad Plea on a Demurrer. *R.* 3 *Co.* 52. *b.*

But a Bar, which wants Subſtance, cannot be aided by a Replication. *D.* 8 *Co.* 120. *b.*

As, if the Defendant pleads an Agreement, and does not ſhew a Satisfaction, if the Replication denies the Agreement, this does not aid the Bar. *Kit.* 237. *b.*

[On Demurrer, the Court looks for the firſt Fault; therefore, if to Debt on Bond Defendant pleads Payment before the Day, it is not made good by Plaintiff's replying and tendering Iſſue. *Anon. H.* 3 *G.* 2 *Wilſ.* 150.]

So a bad Bar or Replication cannot be aided by a Verdict: As, if the Defendant preſcribes for a Common and juſtifies *utend. Communia prædicta*, but does not ſhew that the Cattle were *levant and couchant*, or put therein at a proper Time, this ſhall be intended after a Verdict for the Preſcription. *R. Cro. El.* (458.) *R.* 2 *Cro.* 44. (E. 38) By Verdict. *Vide Ante*, (C. 87.)

If the Defendant juſtifies as Aſſignee of a Reverſion for Rent in Arrear, and Iſſue is upon *Nothing in Arrear*, and it is found ſo, the Defect of Attornment to the Grant in Reverſion ſhall be aided. *R.* 2 *Lev.* 234.

So, if the Defendant pleads an inſufficient Plea, whereon Iſſue is joined, and a Verdict for the Plaintiff, no Advantage ſhall be taken by the Defendant of his bad Pleading. *R.* 5 *Mod.* 227. *Vide Amendment*, (P.)

By the *St.* 8 *H.* 6. 12. Miſpriſion of a Clerk, and after Verdict by the *St.* 32 *H.* 8. 30. Miſpleading, Lack of Colour, inſufficient Pleading or other Default of the Party, and by the *St.* 16 & 17 *Car.* 2. 8. Defect in Form, Miſtake of Name, Sum, or Time, or other Matter of like Nature, not being againſt the Right of the Suit or whereby Iſſue or Trial is altered, ſhall be amended. *Vide Amendment*, (K. 2. L. 2. M.) (E. 39.) By the Statute of *Jeofails*.

What ſhall be a Miſpriſion or Defect in Form. *Vide Amendment*, (T. 1, &c. W.)

After a Plea delivered and before Entry on the Record, it may be amended on Notice and Payment of Coſts. *Pr. Reg.* 19. *Sal.* 520.

Tho' it be three Terms after. *Pr. Reg.* 408.

So a Defendant before Iſſue or Demurrer may wave a ſpecial Plea, and take the General Iſſue. *Salk.* 515.

Not after a Rule to plead peremptorily or Demurrer to his Plea. *Ibid.*

And there ſhall not be a Rule for a peremptory Plea till the Rules are expired. *Sal.* 516.

[If Defendant pleads *Nil debet* to Debt on Bond for Performance of Covenants, the Court will permit him to waive his Plea after Joinder in Demurrer, and to plead Performance, on putting Plaintiff in as good Condition as if he had pleaded right at firſt. *Herbert* v. *Griffiths*, *H.* 16 *G.* 2. *Str.* 1181.]

So if a Declaration be amended after a Plea, the Plea may be altered. *Pr. Reg.* 409.

So a Plea may be waved by the Conſent of the Plaintiff's Attorney, without Motion. *Pr. Reg.* 423.

Or, if the Attorney will not conſent, by Rule of Court on Motion, if it be no Prejudice to the Plaintiff. *Ibid.*

But after the Plea is entred on Record it cannot be amended. *Pr. Reg.* 415.

(E. 40.) To whom a Plea ſhall be delivered.

The Plea ought to be delivered to the Plaintiff's Attorney or Clerk. *C. Att.* 297.

Or, if he is not known, or refuſes to accept it, it may be left in the Prothonotary's Office. *C. Att.* 297. *Pr. Reg.* 418.

In *C. B.* if the General Iſſue be pleaded, the Defendant's Attorney ſigns the Plaintiff's Attorney's Dogget, who thereupon makes a Copy of the Iſſue and delivers it to the Defendant's Attorney, who pays for the Entry and the Book. *C. Att.* 40. *Vide Poſt*, (R. 11.)

If the Plea be Special, it muſt be delivered under the Hand of a Serjeant or Counſel. *C. Att.* 40.

Counſel ought not to ſign a frivolous Plea. *Sal.* 517.

(E. 41.) At what Time.

If the Defendant has not an Imparlance, he muſt plead the ſame Term or within 14 Days after. *C. Att.* 295.

Or at leaſt, if the Plaintiff gives a Rule to plead, he muſt plead before the Eſſoin Day of the next Term. *Mod. Ca.* 22.

So, if there be an Imparlance, he muſt plead within four Days after the Beginning of the next Term.

[Declaration *de bene eſſe* is neceſſary to take Advantage of the Term, if the Writ is of the firſt or ſecond Return, where Defendant is to plead without Imparlance, but not otherwiſe. *Barnes* 91.]

If a Declaration be delivered before the Eſſoin Day of the Term after the Proceſs is returnable, and Rule given the next Term, he muſt appear and plead before the Rule expires.

So he has the whole Term to plead in Abatement. *Sal.* 515.

[If Declaration is delivered without Notice to plead, and afterwards Notice in Writing is given to Defendant (living above 40 Miles from *London*) to plead in eight Days, it is good. *Anon. H.* 2 *G.* 3. 2 *Wilſ.* 137.]

[In Country Cauſes, Defendant living above 20 Miles from *London*, has eight Days to plead. *Barnes* 244.]

If a Declaration be delivered to a Defendant in Priſon upon the *St.* 4 & 5 *W. & M.* 21. before *Menſ. Paſch'* or *Craſt' Animar'* in *London* or *Middleſex*, or 40 Miles Diſtance, he muſt plead two Days before the Eſſoin Day of the next Term. *Vide Ante*, (B. 5. C. 4.)

If farther diſtant, he may imparl to the next Term. *Vide Ante*, (D. 2.)

If the Defendant appears upon a *Habeas Corpus* returnable immediately, in *Hilary* or *Trinity* Term, and the Declaration be delivered eight Days before the End of the Term, the Defendant ſhall plead the ſame Term, ſo that it may be entred. *Pr. Reg.* 70, 406.

If in *Eaſter* or *Michaelmas* Term, and the Declaration be delivered before *Menſ' Paſch'* or *Cras' Animar'*, the Defendant ſhall plead the ſame Term, ſo that it may be tried. *Pr. Reg.* 70. *Sal.* 515.

If a Declaration be ſo delivered on a *Cepi Corpus*, he ſhall only plead to enter. *Sal.* 515.

[If Declaration is delivered to a Priſoner laſt Day but one of Term, he muſt plead two Days before the *Eſſoin* of next Term. *Barnes* 224.]

If the Defendant be an Officer of the Court, he muſt plead within eight Days after the Bill filed and Rule given. *Sal.* 517.

And the Rule may be given the Day of the Filing of the Bill. *Sal.* 517.

And *Sundays*, *&c.* are counted. *Ibid.*

[*Sundays* are counted, unleſs they are the firſt or the laſt Day; if the Rule is given on *Sunday*, it is void; if it expires on *Sunday*, Defendant has all next Day to plead. *Anon. E.* 4 *G. Str.* 86.]

[*Sunday* is included in Matters in *Pais*, as Notice of Trial; but not in Matters in Court, as in Pleading. *Proſſer* v. *Winſton*, *T.* 1722. *Bunb.* 113.]

And, if there are not eight Days within the Term, he muſt plead in four. *Sal.* 517.

[Defendant ſhall not now be obliged to plead ſooner upon a ſpecial *Capias* by Original, than upon a *Latitat*; tho' formerly it was otherwiſe. *Haywys* v. *Savage*, *H.* 12 *G. Str.* 684.]

[Formerly the Rules to plead ran for eight Days, and the four firſt only were allowed for Pleas in Abatement; but Pleas in Chief were ſufficient, if they came in before Judgment ſigned. In *Trin.* 6 *G.* 2. the Time of Pleading was ſhortened to four Days, and no Proviſion for any Diſtinction between the two Sorts of Pleas; but this does not enlarge the Time as to Pleas in Abatement, which muſt

ſtill

ſtill come in within the four Days, and cannot be received after. *Long* v. *Miller*, *T.* 16 *G.* 2. *Str.* 1192. *Wilſ.* 23. *Anderſon* v. *Baddiſlade*, *P.* 20 *G.* 2. *Str.* 1268.]

[If *Oyer* is not delivered in Time, Defendant has as many Days to plead after the Rules are out as he had when he demanded *Oyer*. *Powel* v. *Gay*, *T.* 12 *G.* *Str.* 705.]

[Defendant has as long Time to plead after *Oyer* given, as he had when *Oyer* demanded. *Barnes* 238.]

[The Court will grant Time to plead, if Defendant is ſo ill of a Palſy as not to be able to ſpeak or write, on Condition that he do nothing to prejudice Plaintiff; but, if it continues long, there muſt be a Commiſſion out of *Chancery* to take him into Cuſtody. *Jaſper* v. *Groſvenor*, *T.* 7 *G.* 2. *B. R. H.* 52.]

[On Affidavit that Defendant does not know Plaintiff, and cannot find his Attorney, whoſe Name is not on the Roll of Attornies, the Court will ſtay Proceedings till Notice where Plaintiff lives; and fixing the Rule in the Office, good Service. *Evans* v. *Jones*, *M.* 9 *G.* 2. *B. R. H.* 179.]

[If Defendant is abroad, and his Attorney dead, on Notice to Bail, Court will order that Demand of Plea in the Office ſhall be ſufficient. *Barnes* 307.]

[The Court cannot ſtay Proceedings in Debt on Bond, becauſe it was agreed not to be made Uſe of but on certain Contingencies. *Dolliffe* v. *Langley*, *P.* 9 *G.* 2. *B. R. H.* 240.]

On an Information if the Defendant be brought up by a *Capias*, he muſt plead *Inſtanter*. *R.* 3 *Mod.* 215. *Vide Information*, (D. 5.)

So, if he comes in Perſon, or by Recognizance, or is a Priſoner. *D.* 3 *Mod.* 215.

By the *St.* 13 *Car.* 2. 2. A Priſoner brought up by *Habeas Corpus* and ſerved with a Declaration at the Bar; and now by the *St.* 4 & 5 *W.* & *M.* 21. and 8 & 9 *W.* 3. 27. A Priſoner ſerved with a Declaration in Gaol, ſhall appear and plead, or otherwiſe, on Rule given to be out in eight Days at leaſt after Delivery of the Declaration and Affidavit of ſuch Delivery, Plaintiff may ſign Judgment. *Vide Ante*, (C. 4.)

Rule ſhall not be given, till Affidavit filed with the Secondary of the Time when, and to whom the Delivery was.

And Judgment ſhall not be ſigned before a Copy of an Affidavit be produced to the Prothonotary, and a Certificate that there is no Appearance entred.

[A Judge at his Chambers, in Vacation-time, may make an Order that Defendant ſhall plead ſuch Plea as he will ſtand by. *Foſter* v. *Snow*, *P.* 32 *G.* 2. 2 *B. M.* 781.]

[If after four Day Rule is expired, Defendant obtains Judge's Order to plead iſſuably two Days before Eſſoin of next Term; and before that pleads *Tender*, and intitles it as of preceding Term, it is regular; for it is not after an Imparlance, and Tender is iſſuable within the Meaning. *Kilwick* v. *Maidman*, *H.* 30 *G.* 2. 1 *B. M.* 59.]

[General Performance of Covenants, not ſigned by Counſel, is not an iſſuable Plea. *Barnes* 354.]

[Demurrer is not an iſſuable Rejoinder within an Order for Time. *Barnes* 168.]

(E. 42.) Judgment for Default of a Plea.

When there ſhall be Judgment on Default or Confeſſion. *Vide Poſt*, (Y. 1, 2.)

[If Plaintiff enters Appearance, Judgment may be ſigned, without calling for Plea. *Barnes* 249.]

[If Defendant's Attorney has undertaken to appear, Judgment may be ſigned tho' Appearance is not actually entered. *Barnes* 238.]

[If Declaration is left in the Office before Appearance or Notice, then Appearance, and then Notice in another Term, and Judgment ſigned next Term, it is good; for the Declaration is only well delivered from the Notice. *Barnes* 242.]

If the Defendant appears and pleads Nothing; his Attorny may ſuffer Judgment on *Non ſum informatus*. *Vide Poſt*, (Y. 1.)

[If a Matter which ought to be pleaded in Abatement is pleaded in Bar, Judgment ſhall be for Plaintiff; as if Defendant, who is ſued alone, pleads that it is upon a joint Bond. *Watts* v. *Goodman*, *H.* 13 *G. Ld. Raym.* 1460.]

[Summons after Rule to plead is out, is no Stay, and Judgment may be ſigned. *Barnes* 241, 252, 254, 273.]

[If Summons for Time is ſerved before Judgment can be regularly ſigned, it ſhall be ſet aſide on Terms. *Barnes* 265]

[If Defendant has Time, on Terms of pleading iſſuably, and puts in a ſham Demurrer, Judgment may be ſigned, but not if it is a fair Demurrer. *Gray*. v. *Aſhton*, *M.* 6 *G.* 3. 3 *B. M.* 1788.]

[Or if he is to rejoin *gratis*, *&c.* and inſtead thereof demurs. *Barnes* 371, 168.]

[If Defendant under Order to plead iſſuably, pleads in Abatement, Plaintiff may ſign Judgment without applying to the Court. *Barnes* 263.]

[Judgment may be ſigned without a new Rule, after Order for Time to plead. *Barnes* 243.]

[After Rule given to plead, Plaintiff being ſtaid by Injunction, may ſign Judgment without a new Rule. *Barnes* 238.]

[Judgment ſhall not be ſet aſide for Irregularity in the Appearance entered by Plaintiff, if Defendant had Notice of the Declaration left in the Office, for he ſhould have applied ſooner. *Barnes* 242.

[If *non proſ.* is ſigned irregularly, Plaintiff may proceed to Judgment. *Barnes* 251.]

If the Defendant appears, but does not plead according to the Courſe of the Court, there ſhall be Judgment againſt him by *Nihil dicit*.

[If Defendant dies pending Argument, Judgment ſhall be ſigned *nunc pro tunc*, even tho' Plaintiff had delayed himſelf by joining Iſſue on an immaterial Plea. *Barnes* 255.]

[Judgment ſigned after Defendant's Death is good by Relation, if Roll filed before *Eſſoin* Day of next Term. *Barnes* 266, 267, 268, 270.]

But there ſhall be no Judgment againſt him till a Rule to plead given in the Prothonotary's Office where the Cauſe is entred, and expired *C. Att.* 295. *Mod. Ca.* 22.

[If ſeveral Defendants, and one has no Notice of Writ or Declaration, Judgment muſt be ſet aſide. *Barnes* 246, 293.]

[Notice of Declaration muſt be dated, and contain the Nature of the Action. *Barnes* 291, 295, 299, 409.]

[If the Nature of the Action is not expreſſed in Notice of Declaration, Judgment ſhall be ſet aſide. *Barnes* 498.]

[Notice of Declar tion left under the Door of the Houſe where Defendant had been ſerved, but now empty, good; but put under the Latch without knocking, bad. *Barnes* 403, 411, 278.]

[If Notice is not given till after two Terms from Return of the Writ, (tho' Declaration was in Time) it is irregular. *Barnes* 291.]

[If Defendant's Attorney cannot be found, Notice to the Party is ſufficient. *Barnes* 307.]

[In bailable Action, Notice of Declaration *de bene eſſe* is not neceſſary. *Barnes* 301.]

[If Judgment is entred for Want of Plea in four Days, and there has been no Notice of Declaration, tho' ſpecial Bail put in, excepted to, and juſtified, and afterwards Plea of Coverture, Judgment ſhall be ſet aſide. *Simmonds* v. *Shannon*. *M.* 11 *G.* 3. 3 *Wilſ.* 147.]

[Notice to plead in four Days, inſtead of eight, is bad, though Plaintiff ſtays eight. *Barnes* 302.]

[Notice to plead *within the firſt four Days of Term*, good; and the Days incluſive. *Barnes* 303.]

[If Rule to plead before Notice of Declaration, Judgment bad. *Barnes* 248.]

[Declaration left before Appearance must be marked *de bene esse*, or Judgment bad. *Barnes* 257, 310.]

[Writ returnable in *Easter*, Judgment signed, and set aside for defective Notice in *Trinity*; proper Notice in *Michaelmas*, Judgment shall be set aside; for the Declaration (*i. e.* the Notice) is too late. *Barnes* 291.]

[Demand of Plea on Declaration, not sufficient; it must be in Writing after Rule given. *Barnes* 276.]

[In real and mixt Actions, common Rule to plead is not sufficient; there must be a peremptory. *Barnes* 260.]

And such Rule does not expire till four Days inclusive are past, and it shall not be given after three Days from the End of any Term.. *C. Att.* 295.

[If Process is returnable 15th *November*, Declaration with Notice to plead in eight Days left in the Office 24th *November*, and Defendant does not plead nor file common Bail, and Plaintiff files common Bail, and signs Judgment six Weeks after, it is well. He might have signed it immediately after the eight Days. *Shadwell* v. *Angel*, *M.* 30 *G.* 2. *B. M.* 55.]

[Plea though with Notice of Set-off cannot be delivered in the Country. *Barnes* 251.]

[Plaintiff may sign Judgment for Want of Plea, if Tender pleaded, and Money not brought in, though Defendant has signed *non prof.* for Want of Replication. *Barnes* 252.]

[After Order to plead issuable Plea, Tender to Part, and *Non assumpsit* to Residue, is a Nullity. *Barnes* 252.]

[If *Nil debet* pleaded to a promissory Note, Judgment may be signed. *Barnes* 257.]

[So if Plea by Attorny of another Court. *Barnes* 259.]

[Or Plea in Abatement after Rule out. *Barnes* 331.]

[Or if Plea is not delivered in Form, though a Note on Stamp (I plead *Nil debet*) was sent. *Barnes* 239.]

So if the Defendant pleads the General Issue, but his Attorny refuses Payment for the Issue delivered. 1 *Sal.* 5.

[If Declaration is left in the Office *de bene esse*, and Notice given, Defendant must take it out and pay for it, or Plaintiff may refuse Plea and sign Judgment. *Keeling* v. *Newton*, *T.* 21 *G.* 2. 1 *Wilf.* 173.]

[Judgment may be signed for Non-payment of Copy of which *Oyer* is prayed. *Barnes* 238.]

So, if the Defendant pleads a Plea meerly void or frivolous. *Semb.* 1 *Sand.* 318.

Or pleads a Matter which would not amount to a Justification, if it had been well pleaded. *Mod. Ca.* 10. *R.* 1 *Sal.* 173.

So, if the Defendant justifies in Trespass by a void Warrant, and traverses the Taking in the Place alledged; after a Verdict for the Plaintiff, there shall be Judgment for him upon the Confession, and a Writ of Inquiry shall issue; for it cannot be on the Verdict, where the Issue was immaterial. *R.* 1 *Sal.* 173.

But where the Defendant pleads a defective Plea, there shall be Judgment against him upon the Plea, and not upon *Nihil dicit:* As, if *A.* pleads to Debt upon a Bond Payment at such a Day (which was after the Day limited by the Bond) tho' he confesses no Payment within the Time, yet the Judgment shall be on the Plea, for it is not an exp.ess Confession. *R. Cro. El.* 823.

So, if *A.* pleads that *B. dicit*, *&c.* yet being entred as a Plea, tho' it was but as a Tale of *B.*'s, the Judgment shall be on the Plea, and not on *Nihil dicit*. *R. Yel.* 38.

So, if the Defendant pleads a Thing, which would have been a good Justification. *Mod. Ca.* 10. *R.* 1 *Sal.* 173.

If the Plaintiff, when the Declaration is delivered, underwrites that the Defendant shall not be required to plead, till a Deed, Will, or Letters of Administration shewn, there shall not be Judgment for Want of a Plea, till they are shewn. *C. Att.* 296.

[If

[If Agent gives Time, the Country Attorney cannot ſign Judgment till it is out. *Barnes* 256.]

So the Defendant need not plead till *Oyer* of the Condition, Deed, *&c.* and a Copy thereof delivered. *Pr. Reg.* 417.

[Judgment ſhall be ſet aſide, if perfect *Oyer* has not been given. *Barnes* 263.]

[If Defendant, having had Time to plead, pleading an iſſuable Plea, pleads a bad Plea (as *nil debet*, to Caſe on a promiſſory Note) it is not a Breach of the Order, for it will be good after Verdict, or Plaintiff may have Judgment on Demurrer. *Baily* v. *Edwards*, *M.* 9 *G.* 2. *B. R. H.* 179.]

[Judgment cannot be ſigned till Summons to ſhew cauſe why Time, *&c.* is diſcharged, tho' Defendant's Attorney did not attend. *Barnes* 240, 255.

[On Order for two Days Time, Judgment cannot be ſigned till the third Day in the Afternoon. *Barnes* 266.]

[If Time to plead be granted to a Defendant, who is then dead (unknown to Attornies) and at the Expiration of the Time Judgment is ſigned, it ſhall be ſet aſide. *Sibbet* v. *Ruſſel*, *M.* 9 *G.* 2. *B. R. H.* 183.]

[If Defendant dies after the Rule to plead is out, but before Time given by Judge's Order is expired, the Suit abates; ane interlocutory Judgment, and all Proceedings thereon, ſhall be ſet aſide as irregular. *Wallup* v. *Irwin*. *H.* 25 *G.* 2. 1 *Wilſ.* 315.]

[Where Bail is filed, Plea muſt be demanded in Writing, tho' Notice to plead be on the Back of the Declaration, otherwiſe Judgment will be ſet aſide with Coſts. *Nott* v. *Oldfield*, *T.* 19 & 20 *G.* 2. 1 *Wilſ.* 134.]

[If Defendant has Time to plead on the uſual Terms of Pleading an *iſſuable* Plea, *&c.* and pleads 23 *H.* 6. *c.* 10. (againſt Sheriffs taking Bonds *colore officii*, *&c.*) and that this Bond was taken for Eaſe and Favour, *&c.*—it is within the Order; and Judgment ſigned for Want, *&c.* ſhall be ſet aſide with Coſts. *Dearden* v. *Holden*, *P.* 31 *G.* 2. 1 *B. M.* 605.]

[Judgment becauſe Defendant pleads in Abatement, without taking out the Declaration, is irregular. *Barnes* 250.]

[Judgment cannot be ſigned for Want of new Plea after Declaration amended; Defendant need not plead *de novo*. *Barnes* 273.]

[Judgment on a Declaration, intitled of a wrong Term, is void. *Barnes* 274.]

[If Outlawry is pleaded in Bar, and not as a Dilatory, Judgment ſigned becauſe it is not *ſub pede ſigilii*, ſhall be ſet aſide. *Barnes* 241.]

So Judgment ſhall not be entred, if a Plea be delivered at any Time after the Rule expired. *Pr. Reg.* 406.

So, if an Action has depended four Terms without Proſecution, there ſhall not be Judgment without a Term's Notice given to plead. *Pr. Reg.* 411.

So, after Judgment, if the Plaintiff's Attorny conſents to waive it, he ſhall be bound ſo to do, tho' his Client refuſes. 1 *Sal.* 86.

[Judgment ſigned by Miſtake may be waived, and new Rule and Judgment, without Leave. *Barnes* 251.]

So, if Judgment be ſigned for Want of a Plea, and the Defendant offers an iſſuable or fair Plea without Delay, it ſhall be diſcharged on Payment of Coſts. *Sal.* 518.

[Judgments are frequently ſet aſide on Coſts, pleading iſſuably, and taking ſhort Notice. *Barnes* 242, 243, 250, 253, 256, 260, 271, 303.]

[If Defendant has Time to plead on the common Terms, and doth not, and Plaintiff thereby loſes an Aſſizes, Judgment ſigned ſhall not be ſet aſide on Terms. *Barnes* 254.]

[If Defendant obtains Judge's Order for Time to plead, on pleading iſſuably, and taking ſhort Notice for next Aſſizes, and pleads Recovery in another Court, and Plaintiff, thereupon ſigns Judgment, tho' the Court will ſet it aſide, as the Plea is within the Letter of the Order, yet as it is not within the Intent, they will direct that if the Record is not produced in proper Time, there ſhall be Judgment for Plaintiff, and Defendant ſhall take ſhort Notice of executing Inquiry within the Term. *Lowfield* v. *Jackſon*, *P.* 33 *G.* 2. 2 *Wilſ.* 117.]

[If

[If Defendant has Time on Rule to plead iſſuably, &c. and pleads a Recovery in another Court, it ſhall be ſet aſide with Coſts on the Attorny. *Cave* v. *Aaron*, *M.* 10 *G.* 3. 3 *Wilſ.* 33.]

[Motion to ſet Judgment aſide ten Days after ſigning, too late. *Barnes* 247.]

If Judgment is ſigned becauſe Coverture is *improperly* pleaded, it ſhall be ſet aſide. *Barnes* 246.]

[If ſeveral Pleas, and Iſſue joined on ſome, Judgment by Default cannot be entered in the other till thoſe are tried. *Barnes* 269.]

[Judgment cannot be ſigned againſt caſual Ejector for want of Plea in Form, if Tenants have appeared, entered into common Rule, and ſent Note of Not Guilty, unleſs new Declaration againſt Tenants had been delivered. *Barnes* 270.]

[There muſt be the ſame Notice and Time to plead on Declaration after Exigent ſuperſeded as after any other Proceſs. *Barnes* 271.]

[On Iſſue joined on *nul tiel Record*, Rule for Judgment, if final, muſt be unleſs Cauſe in four Days; if interlocutory, four Days not neceſſary. In Proceedings by Original, a general Return-Day is given to bring in Record, and Defendant is called at riſing of Court; if he fails, Rule unleſs Cauſe on the Appearance-Day, and Record may then be brought in; but by Bill againſt Attorney, the Day given is a Day certain, and Record cannot be brought in after, and at riſing of Court they will appoint the Day for Judgment *niſi*. *Barnes* 265.

[Motion to ſtay Proceedings for Irregularity in Proceſs, or Notice of it, muſt be before Judgment. *Barnes* 269, 296.]

[And for Irregularity in Notice of Declaration, two Days before Inquiry is to be executed. *Barnes* 255.]

[Copies of Proceſs muſt be annexed to the Affidavits to ſtay Proceedings. *Barnes*. 298.]

(F) Replication.

(F. 1.) To whom it ſhall be delivered.

A Replication is the Plaintiff's Reply to the Defendant's Plea and ought to be delivered to the Defendant's Attorny. *C. Att.* 40, 41.

(F. 2.) In what Manner.

If the Replication be Special by Traverſe or otherwiſe, it muſt be under a Serjeant or Counſel's Hand. *C. Att.* 40.

[Replication of *nul tiel Record* muſt (in *C. B.*) be ſigned by a Serjeant, *R.* (all Pleas except General Iſſues *D.*) eſpecially if the Plea was ſigned by a Serjeant. *Simſon* v. *Neale*, *T.* 30 & 31 *G.* 2. 2 *Wilſ.* 74. *Barnes* 365.]

(F. 3.) At what Time.

If the Defendant pleads, the Plaintiff muſt reply in the next Term.

And if he does not on the Day given, he will be nonſuited. *Lat.* 129.

But he cannot be compelled to reply the ſame Term, in which the Defendant pleads. *Lat.* 129.

(F. 4.) The Form of a Replication.

The Replication ought to anſwer the whole Plea, otherwiſe it is a Diſcontinuance. 1 *Sand.* 338. *Vide Ante*, (E. 1.)

[If the Plea admits a Non-performance by offering an Excuſe, it is ſufficient if the Replication meets the Plea, and falſifies the Excuſe, in all Caſes (except only an Award.) *Attorney-General* v. *Elliſton*, *T.* 5 *G. in Sc. Str.* 191.]

The Replication ought to aſcertain the Matter to which it replies: As, *Aſſumpſit* on ſeveral Promiſes, the Defendant pleads *Nonage*, the Plaintiff replies that Part of the Goods were for neceſſary Food, Part for Cloaths; it is bad, if he does not ſhew what Part was for the one or the other. *R. Lut.* 241.

[To Plea of *plene Adminiſtravit* except 10*l.* Replication praying Judgement for the 10*l.* Damages, and "further that on the Day of ſuing Original Defendant "had Goods of Teſtator to the Value of the Reſidue of the Debt, over and "above the 10*l.*" is good. *Lockyer* v. *Coward*, *P.* 10 *G.* 3. 3 *Wilſ.* 52.]

But, if there are ſeveral Pleas, and the Plaintiff replies *quoad ſeparalia Placita prædicta*, it is good, tho' he does not make a ſeveral Replication to every Plea in particular. *R.* 1 *Sid.* 39.

And, if the Plaintiff by Replication ſhews ſeveral Matters, and begins his Replication *Præcludi non quia quoad, &c. dicit*, and makes a general Concluſion to the Whole; yet they are ſeveral Replications as well as if he had ſaid *quoad, &c. præcludi non* to every Matter. *R.* 1 *Sand.* 337. *But Sanders ſemb. cont.*

In *Formedon*, if the Defendant pleads ſeveral Fines, the Demandant may ſay that the ſeveral Fines were without Proclamations, and need not reply to every Bar particularly. *R. Dy.* 182. *a.*

And if there are ſeveral Replications, or Pleas, and the Rejoinder or Replication ſays *quod Placitum prædictum*, in the ſingular Number, yet it is good; for it is *Nomen collectivum*. *R. cont. Yel.* 65. *R. acc.* 1 *Sand.* 338. *But Sanders ſemb. cont.*

So, if there are ſeveral Pleas, and the Plaintiff makes one Replication to all, it is good: As, *De ſon Tort* to the ſeveral Pleas. *R.* 1 *Leo.* 124.

Yet a Demurrer *quoad ſeparalia Placita prædict' A.* and *B.* who plead ſeverally, is bad; for he ought to demur ſeverally. *R.* 1 *Leo.* 139.

[In Debt on Bond to perform Articles, the Plaintiff cannot reply new Matter in the Deed, but muſt ſet it out upon *Oyer*. *Stibbs* v. *Clough*, *M.* 6 *G. Str.* 227.]

[If Defendant pleads that the Ditches, Ways and Paſſages, were ſo filled with Water that he could not carry off his Tithes, and Plaintiff replies, that the Ditches, Ways *and* Paſſages, were not ſo filled, it is good, tho' in the Conjunctive. *South* v. *Jones*, *M.* 6 *G. Str.* 245.]

[It is good if it alledges Plaintiff ſhould not be barred from having his Action aforeſaid, tho' it doth not ſay, in this Court. *Gardiner* v. *Jeſſop*, *H.* 30 *G.* 2. 2 *Wilſ.* 42.

(F. 5.) How it ſhall conclude.

So a Replication ſhall conclude with praying Debt and Damages. *R. Cro. El.* 256. *Adm.* 1 *Sand.* 98.

And therefore a Replication, concluding *unde petit Judicium* if the Plaintiff *ab Actione præcludi debet*, ſeems bad on a ſpecial Demurrer. *Ray.* 182.

Yet where the Plaintiff prays Judgment and his Debt, it is ſufficient, and Damages ſhall be given as Incident. *R.* 1 *Lev.* 222.

So, in Debt, if the Plaintiff prays Judgment and Damages, omitting the Debt, it will be good; for when the Court gives Judgment, it ſhall be for the Whole. *R. upon a ſpecial Demurrer.* 2 *Lev.* 19.

But a bad Concluſion, generally, is only Form. *D. Hob.* 321.

And therefore not praying Damages ſhall be aided on a general Demurrer. *R.* 1 *Sand.* 98.

[If Replication begins Wrong, and concludes Right, it is good; for the Concluſion makes the Plea. *Talbot* v. *Hopwood*, *P.* 5 *G.* 2. *C. B. Fort.* 335.]

[Wherever a Traverſe is added, there muſt be an Averment. *Baynham* v. *Matthews*, *T.* 4 *G.* 2. *Str.* 871.]

(F. 6.) Muſt be conformable to the Count.

The Replication ought to be conformable to the Count: And therefore in Treſpaſs for a wrongful Taking and Detaining in Priſon, if the Defendant juſtifies by Proceſs, *&c.* and the Plaintiff replies that a *Superſedeas* afterwards iſſued, after which he detained him, it will be bad; for by his Replication he does not maintain the wrongful Taking but only the Detention. *R. Cro. El.* 404.

So a Rejoinder to the Bar. *Vide Poſt*, (H.)

In Treſpaſs, if the Defendant pleads *his Freehold*, and the Plaintiff replies, *de ſon Tort the Defendant committed the Treſpaſs*, but omits the Carrying away of the Poſts in the Declaration, it is bad. *R. Lut.* 1402.

Debt for 80*l.* on Bond, the Defendant pleads that it was given for Money won at Play; Replication that it was not for Money won at Play is bad; for he ought to ſay, no Part of the Money was won at Play. *R.* 2 *Mod. Ca.* 57, 58.

[In falſe Impriſonment on 12 *G.* if Defendant pleads Proceſs of an inferior Court, and Plaintiff replies the Debt was 5*l.* and no Affidavit made of the Debt, it is bad; for the Caſe of an Affidavit in an inferior Court is dropt in the Act. *Rycraft* v. *Calcraft*. *Fort.* 344.]

(F. 7.) Departure, what ſhall be. If the Replication, *&c.* does not maintain the Declaration, *&c.*

So, if a Replication departs from the Declaration, or a Rejoinder from the Plea, it is bad. *Co. Lit.* 303. *b.*

Departure is, when a Replication contains ſubſequent Matter, which does not maintain or fortify the Matter in the Declaration. *Co. Lit.* 304. *a.*

As, if the Defendant in Treſpaſs intitles himſelf by Deſcent, the Plaintiff replies a Feoffment by the Defendant himſelf, if the Defendant rejoins that the Feoffment was upon Condition, and he entred for the Condition broken, this is a Departure. *Pl. Com.* 7. *b. Co. Lit.* 304. *a.*

So, if the Defendant in Covenant pleads Performance, generally, and the Plaintiff aſſigns a Breach in the Not Doing of ſuch an Act, and the Defendant rejoins that he offered to do it, this is a Departure; for Offer and Refuſal is not the ſame as a Performance. *Co. Lit.* 304. *a. Cro. Car.* 76, 77.

So, if a Feoffment by *A.* be pleaded, and the Plaintiff replies that *A.* diſſeiſed him and then enfeoffed, and he re-entered, and the Defendant rejoins that after the Feoffment the Plaintiff releaſed, this is a Departure; for it is Matter ſubſequent. *Pl. Com.* 105. *b.*

So, in Treſpaſs, if the Defendant juſtifies the diſtraining a Hide for a Cuſtomary Payment, and the Plaintiff replies that he tanned the Hide after the Diſtreſs, and the Defendant rejoins that it was to prevent its Rotting, it is a Departure. *R. Cro. El.* 783.

So, in Treſpaſs, if the Defendant juſtifies by a Warrant, and the Plaintiff replies that after the Warrant (*viz.*) ſuch a Day he did the Treſpaſs, and ſo varies from the Time in the Declaration, it is a Departure. *R. Cro. Car.* 228. *per* 2 *J. Cro. Car.* 246, 334. *Vide Poſt*, (F. 11.)

So, if he juſtifies by a Deed dated 1 *May*, and in the Rejoinder ſays it was *primo deliberat'* 9 *Maij*. *R.* 3 *Lev.* 349.

Or varies in the Date of a Bond. 1 *Sal.* 222.

If Defendant pleads that the Ship went from *London* to *B.* without Deviation, and from *B.* to *London*, but was loſt in *Voiagio prædicto*; if the Plaintiff ſhews a Deviation to *Jamaica*, and the Defendant ſays that ſhe was impreſſed to *Jamaica*, it will be a Departure. *R. Skin.* 345.

So in Debt on a Bond to perform an Award, if the Defendant pleads *no ſuch Award*, and the Plaintiff ſhews the Award and aſſigns a Breach, and the Defendant rejoins that the Award is bad, this is a Departure. *R. Ray.* 94. 1 *Sid.* 180. *R.* 2 *Rol.* 692. *l.* 40.

So, if the Defendant rejoins *that the Award was not delivered*, *&c.* *R.* 2 *Sand.* 184. 1 *Lev.* 300.

Or, *not made of all Controverſies*. 1 *Lev.* 127. [*R. on Demurrer*. *Harding* v. *Holmes*, *H.* 19 *G.* 2. 1 *Wilſ.* 122.]

So, on a Bond to indemnify, if the Defendant pleads *Non damnificatus*, and the Plaintiffs by Replication ſhew that they are damnified by maintaining his Baſtard, Rejoinder, *that he offered to maintain*, is a Departure. *R.* 2 *Sand.* 84. *Vide* 1 *Sand.* 117.

So on a Bond to perform Covenants, which was to make a Fence when he cut down the Wood, the Defendant pleads that he did not cut down any Wood, and the Plaintiff replies that he cut two Acres and did not make a Fence, and the Defendant rejoins that he made a Fence; this is a Departure. *R. Dy.* 253. *b.*

If a Bond be to pay all Charges to an Attorney for ſuch a Suit, and the Defendant pleads Payment, and the Plaintiff ſhews ſuch a Sum not paid, and the Defendant rejoins that he had no Bill of it; this is a Departure. *R. Lut.* 422.

Or, if the Defendant rejoins that the Plaintiff did not name a Place for the Payment of it. *R.* 2 *Mod.* 31.

[Debt on Bond, with Condition to execute the Office of Overſeer ſingly without Plaintiff's Aſſiſtance; Defendant pleads, that he did execute ſingly without Plaintiff's Aſſiſtance; Plaintiff replies, that he did not execute ſingly without Plaintiff's Aſſiſtance; Defendant rejoins, that Plaintiff voluntarily took on him the Office without Defendant's Requeſt, and that he did it without his Requeſt; it is a Departure. *White* v. *Clever*, *M.* 13 *G. Fort.* 333. *Lord Raymond* 1449.]

If a Bond be to perform Covenants, and the Defendant pleads Performance, and a Breach being aſſigned for Non-payment of Rent, rejoins that he was expelled. *R. Ray.* 22. 1 *Sid.* 77.

Or, if he rejoins, that he has paid ſo much Rent and ſo much for Taxes, which makes up the whole Demand for Rent. *R.* 1 *Sal.* 221.

So, in *Replevin*, if the Defendant avows for *Damage-feaſant* in his Freehold, and the Plaintiff pleads that he leaſed to *B.* for three Years, and the Defendant replies that *B.* made a Leaſe to him for Part of the Years, it is a Departure. *R.* 1 *Rol.* 387.

In Debt on a Bond to deliver Plate won at a Horſe Race, if it appeared before *A.* in three Months that it was not his own Horſe, the Plaintiff averred that it appeared before *A.* within three Months that it was not the Defendant's own Horſe, the Defendant pleaded that it was his own Horſe, the Plaintiff replied that it appeared to *A.* that it was not, the Defendant rejoined that it was, and that it did not appear to *A.* that it was not; this is a Departure from the Bar. *R.* 3 *Lev.* 241.

If the Defendant by Bar preſcribes for a Park within a Foreſt incloſed *ad Voluntatem ſuam*, and by Rejoinder ſays it was incloſed ſo that Deer of the Foreſt cannot get in, it will be a Departure. *Bridg.* 25.

[If in Action on the Caſe on Promiſe Defendant pleads Infancy, Plaintiff replies it was for Neceſſaries, and Defendant rejoins, an Account ſtated, *quodq; ſuperinde præd. quer. exoneravit* Defendant. It is a Departure. *Hillier* v. *Plympton*, *P.* 7 *G. Str.* 422.]

[If the Plea is, no *Ca. Sa.* and the Rejoinder, *erronice emanavit*, it is a Departure. *Hyder* v. *Warren*, *T.* 3 & 4 *G. M.* 13 *G. Fort.* 333. *Ld. Raym.* 1449.]

[So if to *Sci. Fa.* on Recognizance of Bail, Defendant pleads no *Ca. Sa.* againſt Principal, Replication there was, Rejoinder that it did not lie four Days in the Sheriff's Office is a Departure. *Elliot* v. *Lane*, *M.* 26 *G.* 2. 1 *Wilſ.* 334.]

[Treſpaſs for impounding Plaintiff's Mare; Plea, *Damage-feaſant* by eating and ſpoiling the Graſs; Replication, Right of Common; Rejoinder, the Mare was mangy, is a Departure. *Semb. Palmer* v. *Stone*, *T.* 32 & 33 *G.* 2. 2 *Wilſ.* 96.]

[If Defendant juſtifies in Aſſault and Impriſonment, under a *Ca. ad reſpond.* and Plaintiff replies, Defendant releaſed him, and afterwards impriſoned him, and prays Judgment, becauſe Defendant has confeſſed the Treſpaſs; this is naught, and Plaintiff ſhould have made a new Aſſignment. *Scott* v. *Dixon*, *P.* 26 *G.* 2. 2 *Wilſ.* 3.]

So,

So, if the Plaintiff in his Declaration claims an Eſtate by the Common Law, and maintains it in his Replication by an Act of Parliament; this is a Departure. *Co. Lit.* 304. *a.* (F. 8.) If it maintain a Common Law Claim by a Statute.

[In Debt on Bond by Sheriff againſt his Bailiff to pay him 20 *d.* for every Defendant's Name in every Warrant in meſne Proceſs, Defendant pleads he had paid it, Plaintiff replies that he had not paid it for *A.* Deſendant rejoins *Stat.* 23 *H.* 6. and 3 *G.* it is a Departure; for pleading he had paid, and rejoining he ought not to pay; and for pleading Common Law Plea, and rejoining a Statute. *Balantine* v. *Irwin*, *M.* 4 *G.* 2. *C. B. Fort.* 368.]

So, if a Man avows, for that *A.* being ſeiſed in Fee granted to him a Rent, and the Defendant pleads, *Nothing in the Tenements at the Time of the Grant*, and the Plaintiff rejoins that *A.* was *Ceſtuy que Uſe* in Fee, which Uſe is now executed by the Statute of Uſes; this is a Departure. *Pl. Com.* 105. *b.*

So, if a Defendant in Treſpaſs pleads a Leaſe for fifty Years, and the Plaintiff replies, that the Leaſe was void by a Statute, a Rejoinder, that a Proviſo in the ſaid Statute affirmed it for twenty-one Years, is a Departure. *R. Pl. Com.* 105. *b.*

So, in Treſpaſs for impounding his Cattle, if the Defendant pleads that he impounded purſuant to the Statute, and the Plaintiff replies that he impounded in another County, it is a Departure. *R.* 3 *Lev.* 48.

Or, if the Defendant juſtifies by a Diſtreſs for Rent, and the Plaintiff replies that he uſed and ſold them, to which the Defendant rejoins, that he ſold the Diſtreſs purſuant to the Statute 2 *W. & M.* it will be a Departure; for it ſhould have been ſo alledged at firſt. *Semb. Lut.* 1425.

In *Formedon* the Tenant pleads a Fine by Tenant in Tail, the Demandant ſays, *Partes Finis nil habuerunt*, Rejoinder, that the Tenant in Tail was ſeiſed of the Uſe, is Departure. *Dy.* 291.

To an Information for refuſing an Office, the Defendant pleaded, that he was not qualified by not receiving the Sacrament within a Year, the Attorney-General replied, that he ought to have received it, the Defendant rejoined, that by the Act of Toleration, 11 *W. & M.* he was excuſed; this is a Departure. *R.* 1 *Sal.* 168.

Otherwiſe, if the Statute maintains the Declaration. *Vide Poſt*, (F. 11.)

So, if he intitles himſelf by Common Law, and afterwards maintains it by a Cuſtom, it is a Departure. *Co. Lit.* 304. *a.* (F. 9.) Or Cuſtom.

As, if he pleads a Feoffment, and the Plaintiff replies, *within Age*, and the Defendant rejoins, that by the Cuſtom there an Infant of the Age of fifteen Years may make a Feoffment. *D.* 3 *Leo.* 40. Otherwiſe in *Kent.* 1 *Lev.* 81.

But it is otherwiſe, if the Cuſtom be alledged only in Maintenance of the Declaration: As, in Covenant againſt an Apprentice, if the Defendant pleads, *within Age*, and the Plaintiff replies, that by the Cuſtom of *London* an Infant may bind himſelf an Apprentice, this is no Departure. *Semb. Cro. El.* 653. *Semb. cont.* 1 *Lev.* 81.

So, if the Defendant entitles himſelf to an Eſtate, generally, as, by a Feoffment in Fee, he cannot maintain it by other Matter *tantamount*, as, by Leaſe and Releaſe, *&c.* *Co. Lit.* 304. *a.* (F. 10.) Or by Matter *tantamount.*

If he pleads *Not guilty*, he cannot by Rejoinder ſay that he was pardoned. *Hob.* 271.

Departure was fatal on a general Demurrer.

But now, ſince the *St.* 4 & 5 *Ann.* 16. which ſays, the Judges ſhall give Judgment according as the very Right of the Cauſe ſhall appear to them, without regarding any Omiſſion or Defect in any Pleading, there ought to be a a ſpecial Demurrer; for, notwithſtanding ſuch Departure, the whole Matter appears, whereon the Court may give Judgment. *Per C. B. Tr.* 7 *Ann.*

(F. 11.) What ſhall not be a Departure.

But Matter which maintains and fortifies the Count or Bar is not a Departure: As, if the Tenant in Aſſize pleads a Feoffment by *A.* and the Demandant replies, that *A.* diſſeiſed him, and then enfeoffed the Tenant, and afterwards he re-entered: Rejoinder, that the Demandant releaſed to *A.* before his Feoffment, is no Departure. *Co. Lit.* 304. *a. Pl. Com.* 105. *b.*

Otherwiſe, if the Releaſe was after the Feoffment. *Vide Ante*, (F. 7.)

So, if the Plaintiff declares on a Leaſe, generally, and the Defendant pleads, *Nothing in the Tenements*, if the Plaintiff replies, that the firſt Leaſe was by Indenture, this is no Departure. *Semb. Leo.* 156. 3 *Leo.* 203.

So, if the Plaintiff in his Declaration ſhews a Charter for Diſcharge of Toll, and the Defendant pleads a Reſumption of all Liberties by Statute, the Plaintiff may reply, that they are revived by a ſubſequent Statute, and this is no Departure. *R. Cro. Car.* 257. *Yel.* 13.

So, in an Action for practiſing Phyſick, contrary to the Charter 10 *H.* 8. confirmed by the *St.* 14 *H.* 8. if the Defendant pleads the *St.* 34 *H.* 8. 8. it is no Departure, if the Plaintiff replies, that by the *St.* 1 *Mar.* 9. the Charter 10. and *St.* 14 *H.* 8. were confirmed, notwithſtanding any other Statute, *&c.* to the contrary. *R. Cro. Car.* 256. *R.* 2 *Cro.* 121.

On an Action on a Statute, if the Defendant pleads that it was repealed, the Plaintiff may ſay that it was revived by another Statute. 1 *Lev.* 81.

So, if the Defendant pleads that it was expired, the Plaintiff may ſay, that by another Statute it was made perpetual. *Ibid.*

If, in Treſpaſs, the Defendant juſtifies for a Diſtreſs *Damage-feaſant*, the Plaintiff may ſay that he afterwards converted to his own Uſe; for this ſhews the Taking to be a Treſpaſs *ab Initio*. *R.* 1 *Sal.* 221.

So, in Treſpaſs for taking his Horſe, if the Defendant juſtifies as a Stray, Replication, *that he uſed it*, is no Departure. *R.* 2 *Cro.* 147.

In Waſte againſt a Leſſee, without ſaying, by Indenture, if the Defendant ſays, *Nihil habet in Tenementis*, Replication, *that he leaſed by Indenture*, is no Departure. *R.* 1 *Leo.* 156.

So, in Debt on Bond, if the Defendant pleads Performance, the Plaintiff replies, that the Covenant was to account for all Money received, and that he received ſuch a Sum, the Defendant rejoins, that he was robbed of that Sum; this is not a Departure. *R.* 1 *Vent.* 121. 2 *Lev.* 5.

[If on Bond to indemnify from Tonnage due to *A.* Defendant pleads *non damnificat.* and Plaintiff replies, that *A.* diſtrained for ſaid Tonnage, and Defendant rejoins, that nothing was due to *A.* for Tonnage; it is no Departure. *Owen* v. *Reynolds*, *M.* 5 & 6 *G.* 2. *Fort.* 341.]

[In Debt on Bond, conditioned that *A.* ſhall not run away during his Apprenticeſhip, Defendant pleads *A.* did not run away; Replication, that *A.* was bound for ſeven Years, and ran away before the End of them; Rejoinder, that it was only for five Years; this is not Departure, but an Explanation or Fortification of the Bar. *Long* v. *Jackſon*, *M.* 27 *G.* 2. 2 *Wilſ.* 8.]

So, if the Plaintiff in his Replication varies from his Count in a Thing not material, it is no Departure: As, in *Aſſumpſit*, if he alledges a Promiſe twenty Years paſt, and, when the Defendant pleads the Statute of Limitations, replies, *Aſſumpſit infra ſex Annos*; for the Time of the Promiſe in the Declaration was not material. *R.* 1 *Lev.* 110. *per* 3 *J. Cro. cont. Cro. Car.* 334. *Vide infra.* [*Cole* v. *Hawkins*, *H.* 3 *G. Str.* 21. *Matthews* v. *Spicer*, *T.* 2 *G.* 2. *Str.* 806.]

[Otherwiſe in Caſe of a promiſſory Note. *Stafford* v *Forcer*, *P.* 1 *G. Ibid.*]

[If to *Aſſumpſit* laid on 26th *March*, Defendant pleads Tender on 2d *April*, and Plaintiff replies, that before the Tender, *ſcil.* 12th *February*, he ſued a *Lat.* it is well. *Spicer* v. *Matthews*, *M.* 4 *G.* 2. *Judgment of B. R. affirmed in C. Sc. Fort.* 375.]

So, if he alledges a Promiſe in the Pariſh and Ward of *Cheap*, and afterwards in his Replication ſays, that it was at *A.* beyond the Seas, *viz.* in the Pariſh and Ward aforeſaid. *R.* 1 *Lev.* 143. 1 *Sid.* 228.

In *Aſſumpſit* by an Executor, upon a Promiſe to pay a collateral Sum on Requeſt, if he alledges *quod licet requiſit' per Teſtat'*, and ſpecially requeſted by the Executor, he did not pay, and the Defendant alledges that the Teſtator requeſted, and the Action was not brought within ſix Years after, the Plaintiff by his Replication may ſay, the Teſtator did not requeſt, for *licet requiſit' per Teſtat'* in the Declaration is not material. *R. Hard.* 41.

In Debt againſt an Adminiſtrator generally, if the Defendant pleads *No Aſſets by Sale of Lands*, Replication, that he has Aſſets, is no Departure. *R.* 2 *Cro.* 140.

So, if Defendants ſever in Plea, the Plaintiff may vary from his Count, and it will not be a Departure: As, in Ejectment, ſuppoſing an Ejection by ſix Defendants, if One pleads *Not guilty*, and the Others plead ſpecially, the Plaintiff may reply to the Others, ſuppoſing the Ejection by them only. *R.* 2 *Leo.* 199.

Otherwiſe, if One makes Default or dies, and does not ſever himſelf by Plea. 2 *Leo.* 199.

So a Departure, when it is of Neceſſity, is no Prejudice: As, if a Man counts of a Gift in *Tail*, he may maintain it by a Recovery in Value in his Replication; for he cannot have another Count. *Co. Lit.* 304. *a.*

In Treſpaſs for an Aſſault at *H.* the Defendant pleads *Molliter Manus impoſuit* in removing him off his Ground at *A.* Plaintiff replies that he had a Way in the Ground of the Defendant at *A. &c.* it is no Departure; for the Place is not material, and therefore he may maintain the Treſpaſs in another Place. *R. Lut.* 1437.

In Treſpaſs, 1 *May*, the Defendant juſtifies the ſame Day, the Plaintiff may aſſign Treſpaſs on another Day, and it will not be a Departure; for the Day is not material. *Per Holt*, 1 *Sal.* 222. *Mod. Caſ.* 115, 120.

So, in any Perſonal Action, where the Time is not material. *R.* 1 *Sal.* 223.

In Replevin *in alta Viâ regia*, the Defendant juſtifies *Damage-feaſant*, the Plaintiff replies, that he has a Way there *tam equeſtr' quam ped'ſtr'*, it is not a Departure; for the Mention of *Via regia* was not material. *R.* 1 *Sal.* 222.

(F. 12.) When the Replication ſhall aſcertain the Count.

Where the Writ and Count are general, the Certainty ſhall be ſhewn by the Replication: As, in Aſſize. *Pl. Com.* 84. *a.*

So in *Aſſumpſit*, to give as much as he agreed to give to *A.* if the Defendant ſays, that he did not agree to give any Thing to *A.* the Plaintiff by his Replication muſt ſhew with whom he agreed. *R. Yel.* 17.

So in *Aſſumpſit*, in Conſideration that he promiſed to pay all *A.*'s Debts, it is ſufficient, tho' he does not ſhew what Debts, and to whom he paid; for if the Defendant pleads, that he has not paid ſuch a Debt, the Certainty ſhall be ſhewn in the Replication. *Yel.* 18.

(F. 13.) When it ſhall make a Title.

So, in Real Actions, where the Writ and Count are general, the Demandant muſt make a Title by his Replication: As, in *Formedon*, on a Feoffment to the Uſe of the Father of the Demandant in Tail, before the *St.* 27 *H.* 8. brought after the Statute, the Demandant may declare generally, and, on *Ne dona pas* pleaded, ſhew the ſpecial Matter in his Replication. *Bro. Formedon* 49.

So, in Treſpaſs, if the Defendant pleads in Bar, and the Plaintiff traverſes the Point in Bar, which is found for the Plaintiff; yet, if he appears not to have the Poſſeſſion, the Plaintiff ſhall not have Judgment, if he does not make a Title by his Replication. *Poph.* 2.

[If Plaintiff declares on Poſſeſſion (which is only good againſt a wrong Doer) and Defendant pleads *Liberum Tenementum*, Plaintiff muſt ſhew a Title in the Replication. *Vernon* v. *Goodrich*. *Str.* 5.]

But

But where a Title need not be ſhewn to maintain the Action, there, tho' the Defendant confeſſes and avoids the Plaintiff's Title, it is ſufficient for the Plaintiff to traverſe or deny the Matter alledged by the Defendant, without ſhewing any Title by his Replication. *Cro. El.* 288, 671. [*Goſlyn* v. *Williams*, *T.* 5 *G. Fort.* 378.]

As, in Ejectment or Treſpaſs, if the Defendant pleads Title in *A.* who was diſſeiſed by the Plaintiff or his Leſſor, and afterwards re-entred, the Plaintiff may traverſe the Diſſeiſin, without making a Title at large to himſelf or his Leſſor. *R. Cro. El.* 891.

So, if he pleads Title in *A.* who demiſed to the Defendant, and gives Colour to the Plaintiff by a Feoffment to him by *A.* which paſſed Nothing, the Plaintiff may traverſe the Demiſe without making Title; for the Bar by the Colour given admits Poſſeſſion in the Plaintiff, if there was not a Demiſe. *R. Poph.* 1.

(F. 14.) When it ſhall aſſign a Breach.

So, in Debt on a Bond for Non-performance of an Award, if the Defendant pleads, *no ſuch Award*, it is not ſufficient for the Plaintiff in his Replication to ſhew the Award, but he muſt alſo aſſign the Breach. *R.* 1 *Sand.* 102. *Cro. El.* 320. *R. Yel.* 25. *Cro. El.* 899. *Adm. Yel.* 78. *R. Yel.* 152, 153. *Hob.* 198.

So, if the Defendant pleads what is *tantamount* to *No ſuch Award*; as, that two Arbitrators did not make the Award, but an Umpire made it. *Semb. Lut.* 529. *R.* 2 *Cro.* 220.

So in all Caſes, where the Defendant's Plea does not admit a Breach. *Sho.* 214.

So, in *Quare Impedit*, if the Biſhop pleads that he claims Nothing but as Ordinary, and that the Plaintiff did not preſent within ſix Months, by reaſon of which he preſented by Lapſe, and the Plaintiff replies that he preſented *A.* within ſix Months, he ought alſo to ſay, the Biſhop refuſed him, otherwiſe the Diſturbance alledged is not compleat. *Semb. Hob.* 198.

So, in Debt on a Bond to pay the Charges in ſuch a Suit, if the Defendant pleads Payment, the Plaintiff, by his Replication, muſt ſhew a Breach, it being a Bond to do a collateral Act. *Adm. Lut.* 422.

[In Debt on Bond to ſave harmleſs from Money Plaintiff ſhall be obliged to pay, *or* from Suits, *&c.* Defendant pleads *non damnificat*. Replication, that Plaintiff was obliged to pay, and did pay, without ſaying *how* he was obliged, is good. *Simmons* v. *Langhorne*, *H.* 27 *G.* 2. 2 *Wilſ.* 11.]

[Debt on Bond conditioned to indemnify Plaintiff from all Claim of Dower of *A.* a Widow now married to *B.* and from all Charges that may ariſe from ſuch Claim; Plea, that Defendant had indemnified Plaintiff, Replication that *B.* married *A.* and brought Bill in Chancery for Arrears of Dower, and that Plaintiff had anſwered and expended 8 *l.* 10 *s.* Coſts. *R. good on ſpecial Demurrer. Challoner* v. *Walker*, *P.* 31 *G.* 2. 1 *B. M.* 574]

If, on a Bond to pay *quamdiu* he enjoyed ſuch an Office, the Defendant ſays, that he enjoyed it for the Life of *B.* and paid the whole Time, Plaintiff may reply, that he did not pay for that Time, or that he enjoyed it *diutius*; but then he ought to aſſign a Breach, that he did not pay. *R.* 1 *Mod.* 227.

In Debt on a Bond for Performance of Covenants, if the Defendant pleads Performance, the Plaintiff, in his Replication, muſt aſſign a Breach. *Hob.* 14.

[In Debt on Bond to perform Articles, the Breach muſt be as particular as the Covenant. *Stibbs* v. *Clough*, *M.* 6 *G. Str.* 227.]

So the Breach aſſigned muſt be certain, and cannot be ſo general as in a Declaration in Covenant; and therefore that he ſold to *A.* and others ſeveral Times between ſuch a Day and ſuch a Day, is not ſufficient in a Replication. *Semb.* 1 *Sal.* 140.

So the Breach muſt be ſufficient. *Semb. Sho.* 213.

[In

[In Debt on Bond to perform Award, and Plea no Award, if Plaintiff replies, an Award to pay 16 *l.* 10 *s.* and Coſts, and thereupon to give mutual general Releaſes, and aſſigns for Breach, the Non-payment of the 16 *l.* 10 *s.* only, it is good. *Fox* v. *Smith*, *M.* 6 *G.* 3. 2 *Wilſ.* 267.]

[Award to pay 4 *l.* 15 *s.* and Coſts *in an inferior Court*, and to give Releaſes, Breach for not Payment of 4 *l.* 15 *s.* good; for the Award was good for that, tho' void for the Coſts, and the Releaſes make final End. *Addiſon* v. *Gray*, *H.* 6 *G.* 3. 2 *Wilſ.* 293.]

[Debt on Bond, conditioned that *A.* Agent of a Regiment, ſhould pay all the Money he receives from the Paymaſter for the Uſe of the Regiment, to the Officers and Soldiers; Plea that he had paid, *&c.* Replication that he had received 1400 *l.* which he had not paid, is good; for it is but one Breach. *Cornwallis* v. *Savery*, *P.* 32 *G.* 2. 2 *B. M.* 772.]

And if the Plaintiff does not aſſign a Breach, when he ought, it is fatal on a general Demurrer. *D. Hob.* 233, 198.

So, if he aſſigns a bad Breach.

And it ſhall not be aided after Verdict. *R.* 2 *Sand.* 180. *R. Yel.* 153.

(F. 15.) When not.

But, if the Defendant pleads a Plea which, if it be true, will go to the Whole, there, if the Plaintiff by his Replication denies the Matter of the Plea, he need not ſhew a Breach: As, in Debt on a Bond for Non-payment after Notice of his Return to *England*, if the Defendant pleads that he had not Notice, and the Plaintiff takes Iſſue thereon, he need not ſhew in his Replication that he did not pay. *R. Cro. El.* 320.

So on a Bond with Condition to redeem a Mortgage, *&c.* if the Defendant pleads that there was no Mortgage, and the Iſſue is taken thereon, the Plaintiff need not ſhew that it was not redeemed. *Per* 3 *J. Cro. El.* 899. *Yel.* 25.

So, on a Bond to perform an Award, if the Defendant pleads *Non ſubmiſit*, or other collateral Matter, the Plaintiff may join Iſſue thereon, without aſſigning any Breach. *Adm. Lut.* 528. *Yel.* 78. *R.* 1 *Sid.* 290.

So, if the Defendant ſhews an Award and pleads Performance of Part only, and Iſſue is taken thereon. *R.* 3 *Lev.* 24.

If a Bond be conditioned for Performance of Covenants in an Indenture, and the Defendant pleads *Non eſt Factum*. *R.* 1 *Vent.* 114, 126.

Or, on Condition to pay when a Ship returns, and the Defendant ſays it did not return, but was loſt. *R. Carth.* 116.

So, if there be a Demurrer to the Replication, as well as if Iſſue be joined and found for the Plaintiff: As, in Debt on a Bond, with a Condition to pay if a Ship returns before ſuch a Day, the Defendant pleads that it did not return, the Plaintiff replies that it did return, and there is a Demurrer thereon, and *R.* that it was good, without ſaying, *that he did not pay*. *Per Cur'*. *Paſ.* 2 *W. & M. inter Meredith & Allen*. *Sho.* 148. 1 *Sal.* 138. *and the Caſe cont.* 1 *Sand.* 102. 1 *Sid.* 340. *was denied*. *R. cont.* 1 *Sid.* 340. 1 *Sand.* 102. *but there Sand. makes a Quære*. *R. acc.* 1 *Lev.* 55.

So, in a *Scire facias* on a Recognizance to the King, if the Defendant pleads a general Pardon, whereby the Recognizance is diſcharged, the Plaintiff may reply, without aſſigning a Breach. *R. Hard.* 377.

So in Debt on a Bond for Performance of Covenants in an Indenture, the Defendant ſhews the Indenture, and pleads that there are no Covenants therein, the Plaintiff upon *Oyer* of the Indenture may demur, without aſſigning any Breach; for by the *Oyer* it appears, that the Plea was falſe. *R.* 1 *Sand.* 317.

(F. 16.) Muſt not be double.

So a Replication ought not to be double; and therefore, if the Plaintiff replies, *De ſon Tort demeſne abſque hoc, that there is no ſuch Record*, it is bad. *R.* 3 *Lev.* 243. *Vide Ante*, (C. 33, E. 2.)

[In Debt on Bond payable 23d *March*, Defendant pleads Payment on the 22d; Plaintiff replies, he did not pay either on the 22d or 23, or at any Time after making the Bond, it is ill. *Jernegan* v. *Harriſon*, *T.* 6 *G. Str.* 317.

But, if the Defendant pleads ſeveral Matters as Inducement to his Bar, and the Plaintiff replies to each Matter, tho' an Anſwer to One had been ſufficient, yet it is not double; as, in an Action againſt an Executor, who pleads ſeveral Judgments, and no *Aſſets ultra*, if the Plaintiff gives a ſeveral Anſwer to each Judgment, it is not bad. *R.* 1 *Sand.* 337. *But Sand. cont.* 338. *R. acc.* 2 *Sand.* 50.

So, if the Plaintiff by his Replication counterpleads the Defendant's Plea, and aſſigns a Breach thereon, it is not double: As, if the Defendant pleads no ſuch Award, and the Plaintiff replies that ſuch an Award was made, and that the Defendant did not pay, *&c.* 1 *Mod.* 227. *Vide ante*, (F. 14.)

If the Defendant pleads, that he enjoyed the Office for the Life of *B.* and paid during his Life, if the Plaintiff replied that he enjoyed *diutius*, and did not pay, it is not double. *R.* 1 *Mod.* 227.

[If Defendant pleads one intire Qualification, and Plaintiff has ſeveral Excuſes which he cannot plead intire, he may plead them ſeverally; but if he has one Matter which goes to the whole, he muſt plead it intire, and rely upon it. *Humphreys* v. *Churchman*, *T.* 9 *G.* 2. *B. R. H.* 289.]

[The Court will not give Leave to reply double, for it is not within the Statute *Horn* v. *Scawel. Fort.* 335. *Barnes* 363.]

(F. 17.) Muſt be certain.

So a Replication ought to be certain.

And it ought to be more certain than a Declaration. *Semb.* 1 *Sal.* 140.

As to Certainty in a Declaration and Bar, *Vide ante*, (C. 17, 18, 19. E. 5.)

(F. 17.) But Certainty to a common Intent is ſufficient. *Vide Ante*, (C. 24. E. 7.)

But Certainty to a Common Intent is ſufficient: As, in Treſpaſs for three Loads of Oats, the Defendant juſtifies for *Damage feaſant*, the Plaintiff replies that *Tempore quo et diu antea* he was Parſon, and took for Tythes; tho' he does not ſay that he was Parſon at the Time of the Severance, yet it ſhall be intended. *R. Cro. Car.* 63.

So, in Treſpaſs, if the Defendant juſtifies by a Deviſe from *B.* and the Plaintiff ſays that it deſcended to him as Couſin and Heir to *B.* and traverſes the Deviſe, it is ſufficient without ſaying how Couſin. *R.* 2 *Cro.* 86.

[In Debt on Bond, *Oyer* of the Condition, to proſecute Error in the Huſtings, and pay Damages and Coſts, if Judgment affirmed; Plea, that the Writ was proſecuted with Effect and Judgment not yet affirmed; Replication, that Writ was *nonproſs'd* in the Huſtings, good, tho' it does not ſet forth before whom the Huſtings were held, nor that the Writ was returnable. *Lowſield* v. *Satchwell*, *H.* 19 *G.* 2. *Wilſ.* 123.]

[That Defendant has not paid Money to the Officers and Soldiers of a Regiment, according to the ſeveral Proportions of their Pay, is ſufficiently certain. *Cornwallis* v. *Savery*, *P.* 32 *G.* 2. 2 *B. M.* 772.]

[That Defendant was attached by Writ of Privilege is ſufficient, without ſetting forth the Return, for it refers to the Return whenever it was. *Barnes* 163.]

(F. 18.) De ſon Tort Demeſne, when it ſhall be replied generally.

(F. 18.) If the Plea goes meerly in Excuſe.

If Defendant pleads a Plea meerly in Excuſe of an Injury to the Perſon, or the Reputation of another, *De ſon Tort demeſne ſans tiel Cauſe* is a proper Replication. 8 *Co.* 67. *a. Crogate.*

As, in an Action of Treſpaſs for an Aſſault and Battery, if the Defendant pleads *ſon Aſſault demeſne.* 8 *Co.* 67. *a.*

Or,

Or, *that the* Plaintiff *entred upon his Poſſeſſion, and he* Molliter Manus impoſuit, *and if he has Damage it was on his own Aſſault.* *R. Lat.* 128, 221.

So, in Treſpaſs for falſe Impriſonment, if the Defendant pleads *that the Plaintiff broke the Peace, and be being a Conſtable, and preſent, took him to carry him to a Juſtice of the Peace.* *Bro. De ſon Tort* 18.

Or, *that he being a Conſtable took him being a Vagrant.* *Bro. De ſon Tort* 20.

Or, *on Hue and Cry for a Robbery.* *Bro. De ſon Tort* 39.

Or, *that he reſtrained the Plaintiff being a Lunatick.* *Bro. De ſon Tort* 44, 51.

That he being Rector and the Tythes ſevered, the Plaintiff would have carried them away, and in Defence of his Tythes Molliter Manus impoſuit, *&c.* *R.* 2 *Cro.* 224. *Yel.* 157.

So, in an Action on the Caſe for Defamation, if the Defendant excuſes himſelf by *Hue and Cry.* 8 *Co.* 67. *a.*

(F. 19.) Or juſtifies by Matter of Fact.

So, if the Defendant by Plea makes a Juſtification, which conſiſts wholly of Matter of Fact, *De ſon Tort demeſne* generally is a good Replication: As, in falſe Impriſonment, if the Defendant juſtifies by Proceſs out of the Admiralty, Hundred, or County Court, or other Court not of Record. 8 *Co.* 67. *a.*

In an Action for Words, if the Defendant juſtifies by reaſon of a Robbery by the Plaintiff. 2 *Leo.* 103. 1 *Saund.* 243.

In an Action for a Conſpiracy, if the Defendant juſtifies for Suſpicion of Felony, on which the Defendant was bound by a Juſtice of Peace to proſecute. *Win. Ent.* 108. *Vide Ent.* 147.

In Treſpaſs, if the Defendant juſtifies the Taking for a *Herriot.* *Bro. De ſon Tort* 5, 10.

Or for *Eſtovers.*

In Replevin, if the Defendant avows for the Penalty of a Bye-law made within the Manor according to the Cuſtom. *R.* 3 *Lev.* 48. *Lev. Ent.* 156.

So by the *St.* 43 *El.* 2. In Replevin if the Defendant avows for a Diſtreſs for the Poor's Rate.

So, tho' in the Plea a Matter of Record or Title be alledged as Inducement to the Plea. *Vide Poſt,* (F. 20, 21.)

(F. 20.) When it is not a good Replication generally.

(F. 20.) If Matter of Record be mixt with the Fact.

But *Sans tiel Cauſe* goes to the whole Plea; and therefore where the Defendant juſtifies by Matter of Record as well as Matter of Fact, *De ſon Tort* generally is not a good Replication, for then the Matter of Record will be put in Iſſue; but he ought to ſay *De ſon Tort, &c.* and traverſe the Matter of Fact: As, in falſe Impriſonment, if the Defendant juſtifies by a *Capias* to the Sheriff and a Warrant to him, the Plaintiff ought not to reply *De ſon Tort,* without traverſing the Warrant. 8 *Co.* 67. *a.* *R.* 3 *Lev.* 65.

So, in an Action for Words, if the Defendant juſtifies by reaſon of Perjury in a Court of Record, it is not a good Replication without a Traverſe. *Semb.* 2 *Leo.* 81, 102.

In Treſpaſs, if the Defendant juſtifies by Proceſs out of an Inferior Court of Record. *Semb. Hard.* 6.

So, if the Defendant juſtifies by the Cuſtom of a Manor, *De ſon Tort, &c.* generally is not a good Replication, but it ought to traverſe the Cuſtom. *R. Hob.* 76. *Cont. per* 3 *J. Lev. acc.* 49.

Yet, where the Defendant juſtifies by Cuſtom of Foldage, *De ſon Tort* is a good Replication. *Kit.* 223. *a.*

And if the Matter of Record be only Inducement to the Plea, *De ſon Tort, &c.* may be replied generally: As, in Treſpaſs, if the Defendant pleads a Preſentment in a *Swainmote-Court,* and that he, as Foreſter, requeſted him to anſwer, and becauſe the Plaintiff refuſed, he took him, *De ſon Tort, &c.* is a good Replication; for the Preſentment is only Inducement. *D.* 2 *Leo.* 81.

(F. 21.) If the Defendant claims an Intereſt in or out of the Land.

So, if the Defendant in his own Right claims any Intereſt in the Land, *De ſon Tort, &c.* generally is not a good Replication. 8 *Co.* 67. *a.* *R.* 2 *Sand.* 295. 1 *Lev.* 307.

So,

So, if he claims an Intereſt out of the Land: As, Common. *R.* 8 *Co.* 67. *a.*
Or Rent. 8 *Co.* 67. *a.*
Or a Way or Paſſage over the Land. 8 *Co.* 67. *a.* *R.* 2 *Cro.* 599.
Or Trees cut down on the Land. *R. Cro. El.* 539.

So, if he claims, as Servant to another, any Intereſt in or iſſuing out of the Land, *&c.* it is not a good Replication, without traverſing the Command, where this appears to be material. 8 *Co.* 67. *a.* And ſo it ſeems to be intended. *Cro. El.* 14, 540.

And therefore, in Replevin, if the Defendant, as Bailiff, avows for *Damage feaſant*, and the Plaintiff pleads that *A.* was ſeiſed of two Parts, and by his Licence he put his Cattle there, *De ſon Tort* generally is not a good Rejoinder. *R. on Demurer. Cro. El.* 812.

So, if the Plaintiff makes Title in his Declaration, and the Defendant pleads a Title in Avoidance of the Cauſe of Action, or in Deſtruction of the Plaintiff's Title, *De ſon Tort, &c.* is not good without a Traverſe: As, in Treſpaſs for taking his Servant, if the Defendant pleads that the Father of the Servant held of him in *Chivalry, &c.* and he took him as his Ward, *De ſon Tort, &c.* is not good without a Traverſe of the Seigniory. *D. Yel.* 158. 1 *Brownl.* 215.

So, in Treſpaſs, if the Defendant makes Title by Deviſe; *De ſon Tort, &c.* is not a good Replication. *R.* 1 *Lev.* 307.

Yet, if the Title alledged be only Inducement, *De ſon Tort, &c.* may be replied generally: As, in Battery, if the Defendant pleads that he was ſeiſed in Fee of a Cloſe, and had cut his Corn, and the Plaintiff came to take away his Corn, and he in Defence, *&c.* *De ſon Tort, &c.* is a good Replication. *R. Yel.* 157. *R. Lat.* 221. 1 *Brownl.* 215.

(F. 22.) If the Defendant claims by Authority from the Plaintiff himſelf.

So, if the Defendant juſtifies by Authority derived mediately or immediately from the Plaintiff, tho' he claims no Intereſt, yet *De ſon Tort, &c.* generally is not a good Replication. 8 *Co.* 67. *a.*

As, by the Licence or Command of the Plaintiff. *Kit.* 221. *b.*

(F. 23.) Or by Authority of Law.

So, if the Defendant juſtifies by Authority of Law: As, to view Waſte. 8 *Co.* 67. *b.*

So, if he juſtifies by Statute: As, where the Defendant juſtified the Cutting of Leather as a Searcher by the *St.* 1 *Jac.* 1. 22. *Semb.* 2 *Rol.* 694. *l.* 10. But it was replied. *Bro. Vad.* 435.

(F. 24.) How it ſhall be pleaded.

If a Man pleads *de Injuria ſua propria* without ſaying *abſque tali Cauſa* it is bad. *Semb.* 2 *Cro.* 599. *R.* 1 *Rol.* 47.

But this ſhall be aided after Verdict. *D.* 1 *Vent.* 70. *Semb. cont.* 1 *Sid.* 341. *Hard.* 40.

So, if the Defendant pleads *de Injuria ſua propria abſque hoc quod non eſt culpabilis*, or Nothing in Arrear, *&c.* it will be bad on a ſpecial Demurrer; for it is a frivolous Introduction to the General Iſſue. *R. Sal.* 583.

But *De ſon Tort abſque tali Warranto*, where the Defendant juſtifies by Warrant, ſeems good. *Lut.* 1460.

And *De ſon Tort* to ſeveral Pleas is good; for *abſque tali Cauſa* refers to all. *R.* 1 *Leo.* 124.

So, if the Plaintiff replies, *De ſon Tort, &c.* generally, when he ought not, there ſhall be a Repleader.

And *De ſon Tort* generally, when he ought not, will be aided after Verdict by the Statute of *Jeofailes*; for it is Form only. *R. Hob.* 76. *R. Ray.* 50. *R.* 1 *Brownl.* 200.

Yet it was held bad on a general Demurrer. 3 *Lev.* 65.

So, if the Plaintiff replies ſpecially, and does not ſay *De ſon Tort, &c.* where he ought, it ſhall be aided after Verdict by the *St.* 32 *H.* 8. 30. *R.* 1 *Sid.* 445. 1 *Vent.* 70.

(F. 25.) Replication bad in Part is bad for the Whole.

An intire Replication, bad in Part, is bad for the Whole: As, in an Action on *Indebitatus aſſumpſit* and *Inſimul computaſſet*, if the Defendant pleads the Statute of Limitations, and the Plaintiff replies that the Money in the ſeveral *Aſſumpſits* are due in Trade, as Merchants, if this ſhould be good as to the *Inſimul computaſſet*, yet being bad as to the *Indebitatus aſſumpſit*, it is bad for the Whole. *Semb.* 2 *Sand.* 127.

(G) Traverſe.

(G. 1.) By what Words it ſhall be.

THE proper Words of a Traverſe are, *without this* or *abſque hoc*. 1 *Sand.* 22.

But Words equipollent are ſufficient, and therefore a Traverſe by the Words, *Et non*, is ſufficient: As, if the Defendant pleads that *A.* was taken by a Warrant returnable *Die S. poſt Oct. Pur' Et non Virtute Warranti retorn' Die V.* is a good Traverſe of a Warrant returnable *Die V. R.* 1 *Sand.* 22. 1 *Lev.* 192.

So, if a Replication be *De ſon Tort abſque tali Warranto*, it ſeems good, tho' it does not ſay expreſly *abſque hoc that there was ſuch a Warrant*. *Lut.* 1460.

So, if there be a Traverſe of the Matter alledged by the other Party, without ſaying *Modo et Forma prout, &c.* it will be well. *Semb.* 2 *Leo.* 5.

Yet a Traverſe ought to be by expreſs Words and not Argumentative: As, if he traverſes *abſque hoc quod intravit et ſic ſe intruſit*. *Yel.* 170.

If a Traverſe be *abſque hoc quod eſt culpabilis aliter aut alio Modo*, this does not extend to the Time but only to the Manner of the Fact. *Lut.* 1457.

A Traverſe ought not to conclude to the Country; for it is in the Negative. *R.* 3 *Mod.* 203.

(G. 2.) When neceſſary.

Generally, Matter of Fact expreſly alledged in the Count of Bar, if it is not confeſſed or avoided, muſt be traverſed: As, in Trover, if the Defendant juſtifies by Seiſure as a Waif, he muſt traverſe the Converſion. *R. Mo.* 572. *Per* 2 *J. Cro. El.* 693.

In Replevin, if the Defendant claims Common in ſix Acres, and the Plaintiff alledges that he had Common in forty Acres, he muſt traverſe that he had Common in ſix Acres only; for it cannot be intended the ſame Common. *R.* 1 *Leo.* 44.

So, in Debt for Rent upon a Leaſe of ten Acres, if the Defendant ſays that he leaſed the ten Acres and alſo a Rectory, *&c.* he muſt traverſe a Leaſe of ten Acres only. 1 *Leo.* 44.

So, in an Action upon the Caſe that the Defendant overcharged a Warehouſe by Means whereof it fell, if the Defendant pleads that it was ruinous and therefore it fell, he muſt traverſe that it was overcharged. *Per* 2 *J. Manwood cont. Cro. El.* 285.

So, in Treſpaſs for the Taking of four Pigs diſtrained, one after impounding, the others before, if the Defendant pleads Tender of Amends, he muſt traverſe the Impounding, for a Tender afterwards is too late. *R. Lut.* 1262.

So, if the Defendant juſtifies the Publication of a Libel to *A.* one of thoſe to whom he is charged to have publiſhed a Libel, he ought to traverſe all Others to whom he is charged to have publiſhed it. *R.* 1 *Lev.* 241.

So, in Treſpaſs, if Defendant juſtifies at another Place than is laid in the Declaration, a Traverſe is neceſſary. *Benjamin* v. *Howell, M.* 18 *G.* 2. 1 *Wilſ.* 81.

So, if the Defendant makes a local Juſtification, he ought to traverſe all Places except that to which the Juſtification extends: As, if he juſtifies as Sheriff, he muſt traverſe all Places except his own County. 2 *Cro.* 372. *R. Cro. El.* 504.

If he juſtifies a Treſpaſs by a Releaſe, *&c.* at a Day precedent, he muſt traverſe all Times after. 1 *Sal.* 222.

If he juſtifies as Conſtable, he muſt traverſe all Places but his own *Vill. Co. Lit.* 282. *b.*

If, as other Officer, all Places but thoſe within his Authority. *Sav.* 25, 57.

If he juſtifies a Diſtreſs for *Damage feaſant* in *A.* he muſt traverſe all other Places. *Co. Lit.* 282. *b.* *R. Cro. El.* 705.

Or a Diſtreſs for Rent, he muſt traverſe all Places not demiſed. *R.* 1 *Sid.* 293, 294.

So, if he juſtifies by *Moliter Manus impoſuit* for entring his Houſe in *A.* he muſt traverſe all other Places. *R. Cro. El.* 705. 1 *Rol.* 19. *R. Lut.* 1437.

So, if he juſtifies by Proceſs out of an Inferior Court, he ought to traverſe all Places out of their Juriſdiction. *Semb.* 1 *Rol.* 264, 265. *Lut.* 1563.

So, if he juſtifies by Proceſs, *&c.* he ought to traverſe all Times before the *Teſte* and after the Return. *R.* 1 *Rol.* 406.

If he juſtifies as Sheriff, *&c.* he ought to traverſe all Times before his Office or ſince. *R.* 1 *Lev.* 216.

And ſuch Juſtification muſt not be larger or narrower *Vide Poſt*, (G. 15, 16.)

And, if the Place or Time is not material, the Juſtification muſt be in the Place and on the Day alledged in the Declaration. *Vide Poſt*, (G. 12.)

So, if a Man makes Title by Feoffment, and the other pleads a prior Feoffment, he ought to traverſe the laſt. *Vide Poſt*, (G. 3.)

Or by Grant of a Copyhold, and the other pleads that the Manor came, by reaſon of the Vacancy of a Biſhoprick, *&c.* to the Hands of the King, who made a prior Grant to him, he muſt traverſe the laſt Grant by Copy; for he has not confeſſed Seiſin in him, who made the laſt Grant, and avoided it. *R. Cro. El.* 754. *Vide Poſt*, (G. 3.)

If the Defendant avows for Rent granted by *A.* ſeiſed in Fee, and the Plaintiff ſays that *A.* was ſeiſed in Tail and died, and the Land deſcended to him, he muſt traverſe the Seiſin in Fee. *Semb. Dy.* 312. *b.*

If the Plaintiff counts that *A.* ſeiſed in Fee demiſed for Years, *&c.* and the Defendant pleads that before the Seiſin of *A. B.* being ſeiſed deviſed to him in Tail, and that he was ſeiſed till *A.* diſſeiſed him and leaſed, *&c.* if the Plaintiff ſays that the Defendant afterwards levied a Fine to *A.* he ought to traverſe the Diſſeiſin. *R. Jon.* 402.

So, if the Plaintiff alledges a Seiſin in Fee, and the Defendant ſhews that he had a conditional Fee, he muſt traverſe the Seiſin in Fee alledged; for it would be intended an abſolute Fee. *R. Yel.* 140.

So, if the Plaintiff alledges Seiſin till *A.* died without Iſſue, and the Defendant confeſſes an Eſtate till *B.* died without Iſſue, he muſt traverſe the Eſtate alledged by the Plaintiff; for they are different Eſtates. *R. Yel.* 140.

So, if the Plaintiff counts of an Eſtate to him and his Heirs Male, and the Defendant of one to him and his Heirs Female, he muſt traverſe the firſt Eſtate ſurmiſed by the Plaintiff. *Yel.* 141.

So, if the Plaintiff claims by Preſcription and the Defendant confeſſes a Title by Deed, he muſt traverſe the Preſcription. *Yel.* 141.

So, if the Plaintiff claims a Seiſin in Fee (which ſhall be intended in Poſſeſſion) and the Defendant intitles himſelf to a Leaſe prior to the Plaintiff's Seiſin (by which it appears he had a Fee only in Reverſion) he muſt traverſe the Seiſin of the Plaintiff in Fee. *Per* 2 *J. Cro. cont. Cro. Car.* 324. 3 *Mod.* 319.

If the Plaintiff declares on a Demiſe of two Chambers, and the Defendant pleads a Demiſe of two Chambers and another Room and Entry therein, he muſt traverſe the Demiſe of the two Chambers only. *R.* but *Sand.* thought that the Traverſe would be more proper on the Part of the Plaintiff. 1 *Sand.* 207. *Ray.* 170. 1 *Lev.* 263.

So, in Detinue of a Cheſt with Charters, if the Defendant pleads Delivery of a Box with Charters as a Pledge, he muſt traverſe the Detinue of a Cheſt.

In Diſceit againſt an Attorny for appearing without Warrant, who pleads that he appeared only for another Defendant from whom he had a Warrant, he muſt traverſe the *Covin*. *R. Dy.* 361. *b.*

If the Defendant ſays that *A.* being ſeiſed demiſed to him, and the Plaintiff replies that *A.* before enfeoffed him, he muſt traverſe the Demiſe, except where he adds an Entry and Demiſe, and afterwards a Re-entry. *Cro. El.* 754.

So, if the Defendant confeſſes and avoids the Matter of the Count, *&c.* only by by Argument, he muſt traverſe: As, in Debt againſt an Executor, who pleads that he is Adminiſtrator, he muſt traverſe Adminiſtration as Executor. *Kitt.* 229. *b.*

In Debt againſt an Adminiſtrator, who pleads that he is Executor, he muſt traverſe the dying Inteſtate. *Kit.* 229. *a.*

In an Action upon the Statute of Labourers, and Count that the Defendant was a Vagrant and refuſed to ſerve; if the Defendant pleads that he was in the Service of *A.* he ought to traverſe, *without this that he is a Vagrant*. *Kit.* 229. *a.*

In Partition if the Defendant pleads that he is ſole ſeiſed, he muſt traverſe that he holds *pro indiviſo*. *Kitt.* 229. *b.*

In Treſpaſs, the Defendant pleads a Leaſe granted by the Maſter and Fellows of a College, if the Plaintiff replies that at the Time of the Demiſe alledged there were no Fellows, he muſt traverſe *abſque hoc* that the Maſter and Fellows demiſed. *Kit.* 229. *b.*

If the Defendant alledges Seiſin of a Manor, and thereon juſtifies for a Herriot, if the Plaintiff replies that *B.* was jointly ſeiſed with him, he muſt traverſe *abſque hoc* that Defendant was ſole ſeiſed. *R.* 2 *Mod.* 60.

If the Defendant alledges Seiſin in him of a Manor and a Fine levied, and the Plaintiff replies that he himſelf was and ſtill is ſeiſed, he muſt traverſe the Defendant's Seiſin at the Time of the Fine. *R.* 1 *Leo.* 77. 1 *And.* 166. *Sav.* 86.

If he alledges Seiſin in *A.* by whoſe Command he took *Damage feaſant* and the Plaintiff alledges that the Father of *A.* was ſeiſed and leaſed for Life to *B.* under whom he claims, he muſt traverſe the Seiſin of *A.* at the Time of the Taking. *Dub.* 3 *Mod.* 318. *R. Carth.* 165.

If the Defendant alledges Seiſin in *A.* who deviſed to his Father in Tail, who died ſeiſed, and that Defendant entred and was ſeiſed till diſſeiſed by the Plaintiff, if the Plaintiff confeſſes the Seiſin and Deviſe, but pleads a Recovery and Conveyance to himſelf he muſt traverſe the Diſſeiſin. *R. Cro Car.* 494. *Jon.* 402.

If he alledges Seiſin in *A.* and a Demiſe and Grant of the Reverſion to the Plaintiff, to which the Plaintiff confeſſes Seiſin of a Moiety by *A.* and a Demiſe and Grant to the Plaintiff, who granted to the Owner of the other Moiety, he muſt traverſe that *A.* was ſeiſed of the Whole at the Time of the Demiſe.

So, tho' the Matter of the Count or Bar be confeſſed and avoided by the Plea in the Affirmative, he ought to traverſe in the Negative, otherwiſe there can be no Iſſue. *Vide Poſt*, (*R.* 3.)

As in Treſpaſs for taking ſix Beaſts, the Defendant juſtifies the Taking by Agreement, the Plaintiff replies that they were other ſix, he muſt traverſe in the Negative, without this that he took the ſame ſix. *Kit.* 229. *a.*

In Debt on a Bond dated 2 *April* and *primo deliberat'* 2 *May*, the Defendant pleads a Releaſe 9 *April*, and that the Bond was delivered 2 *April*, he muſt traverſe *abſque hoc* that it was *primo deliberat'* 2 *May*. *Kitt.* 229. *b.*

In Debt on a Bond conditioned to deliver an Inventory of all the Goods of *B.* the Defendant ſays that he delivered an Inventory of ſuch Goods which are all, the Plaintiff replies that *B.* had ſuch other Goods, he muſt traverſe that thoſe named by the Defendant are all. *R. Dal.* 52.

So, in all Caſes the Replication muſt confeſs and avoid the Bar, or traverſe it, except where it is Matter of Law, Suppoſal, or Matter that cannot be tried. 1 *And.* 166. 1 *Leo.* 77.

[If

[If Plaintiff in his Replication makes ſeveral Averments, which the Defendant does not traverſe in his Rejoinder, to which Plaintiff demurs, Judgment ſhall be for Plaintiff; for whatever is materially alledged muſt be traverſed, or it is always taken to be admitted. *Nicholſon* v. *Simpſon*, *P.* 6. *G. Str.* 297. *Fort.* 356.

[If a Cuſtom is pleaded, and Plaintiff replies another Cuſtom repugnant to it. *Kenchin* v. *Knight*, *M.* 23 *G.* 2. 1 *Wilſ.* 253.]

(G. 3.) When not neceſſary.

(G. 3.) If the Party confeſs and avoid.

But, generally, if the Matter of the Count or Bar be confeſſed and avoided, a Traverſe is not neceſſary: As, if the Defendant juſtifies as Aſſignee of a Term for Years of *A.* if the Plaintiff claims by a prior Aſſignment from *A.* of the ſame Term, he need not traverſe the Aſſignment to the Defendant, for he has confeſſed and avoided it; for after the Aſſignment to the Plaintiff *A.* could not aſſign to the Defendant. *R. Mo.* 551. *Cro. El.* 650. *Per* 2 *J.* 3. *cont. Ow.* 142. *R. per* 3 *J.* 6 *Co.* 24. *b. R. Mo.* 557. *Dub.* 2 *Vent.* 212.

So, if a Man claims a Copyhold, and the other Party claims by a prior Grant, he need not traverſe the ſubſequent Grant, but the Traverſe muſt be of the prior Grant. *R.* 2 *Cro.* 299. *Yel.* 221. 2 *Bul.* 1. *Vide Ante*, (G. 2.)

So, if a Man claims by Patent, the other who has a prior Patent need not traverſe the laſt Patent, tho' it be not fully avoided; for by Poſſibility the King might have a new Title after the firſt, and before the ſubſequent Grant. *Per* 3 *J. Cro. Car.* 581.

So, if the Defendant pleads that the Plaintiff abated after the Death of *A.* and the Plaintiff replies that *A.* deviſed to him, he need not traverſe the Abatement. *R. Yel.* 151. *Vide Lut.* 1558.

Yet if the Feoffment of *A.* be pleaded, and the other pleads a prior Feoffment from *A.* he muſt traverſe the laſt Feoffment; for poſſibly *A.* might gain a new Eſtate by Diſſeiſin after the firſt Feoffment. *Dy.* 171. *Cro. El.* 650. 6 *Co.* 25. *a. R.* 2 *Cro.* 681. *R. Cro. El.* 30. *Vide ante*, (G. 2.)

So, if there be a Suggeſtion in Prohibition of a perpetual Unity, if the Defendant ſhews that the Abby was founded within Time of Memory, he need not traverſe the Preſcription, for it is ſufficiently avoided. *R. Yel.* 31.

Otherwiſe, if the Land was in the Hands of Farmers; for then the Preſcription muſt be traverſed. *R. Yel.* 31.

So, in *Quare Impedit*, if the Plaintiff counts that *A.* being ſeiſed in Fee preſented *B.* and granted the next Avoidance to him, *&c.* and the Defendant pleads that *A.* being ſeiſed in Fee enfeoffed others to the Uſe of himſelf for the Life of *C.* and then granted the next Avoidance, and that *C.* died, he need not traverſe the Seiſin in Fee at the Time of the Grant, for he has confeſſed and avoided it. *Dub. Hob.* 102.

So, in a *Scire facias* againſt Tertenants, who plead that the Cogniſor and others were jointly ſeiſed, and the Cogniſor died, *&c.* if the Plaintiff replies a Bargain and Sale, this avoids the joint Seiſin; and therefore it need not be traverſed. *R.* 2 *Sand.* 28.

So, in Avowry by Diſtreſs for Rent of a third Part, if the Plaintiff in Bar intitles himſelf to the other two Parts in Common, he need not traverſe the Taking in the third Part only; for he has confeſſed and avoided. *R.* 2 *Vent.* 228, 283.

If the Defendant juſtifies Impriſonment by the Sheriff's Warrant upon a *Capias*, and that the Plaintiff eſcaped, whereon he by the ſame Warrant retook him, if the Plaintiff replies he eſcaped with the Sheriff's Conſent, he need not traverſe the ſecond Taking. *R.* 1 *Brownl.* 197.

[If a Cuſtom is pleaded, and Plaintiff replies another Cuſtom *not* repugnant to it. *Kenchin* v. *Knight*, *M.* 23 *G.* 2. 1 *Wilſ.* 253.]

Yet, if there be not a full Confeſſion and Avoidance, there may be a Traverſe, tho' it is not neceſſary: As, in Replevin, if the Defendant avows a Diſtreſs

Diſtreſs in two Parts of the Land, and the Plaintiff makes Title to a fourth of the third Part, if the Avowant conveys to him the two Parts alſo, he may traverſe that he was ſeiſed of the fourth only. *R. Hob.* 80.

So, in *Quare Impedit*, the Plaintiff counts of a Grant of *A.* ſeiſed in Fee, the Defendant ſhews that he was ſeiſed only *pur auter Vie*; yet he may traverſe the Seiſin in Fee. *Semb. Hob.* 103. *Mo.* 869.

And to add a Traverſe is the ſureſt Way. *D. Mo.* 869.

(G. 4.) If he juſtify the whole Action.

So, if he juſtifies the whole Fact, a Traverſe is not neceſſary: As, in Battery, if the Defendant juſtifies by Caſualty, he need not traverſe *Aliter aut alio Modo*. *D. Mo.* 864. *Cro. El.* 667.

[If in Treſpaſs for taking and detaining Cattle at *A.* Defendant juſtifies for *Damage feaſant* at *B* and that he impounded at *A.* he need not traverſe. *Ryley* v. *Parkhurſt*, *T.* 21 & 22 *G.* 2. 1 *Wilſ.* 219.]

(G. 5.) If it be a Matter of Law.

So, if a Man alledges Matter of Law in Bar or Avoidance of another's Title, a Traverſe is not neceſſary: As, in Ejectment, if the Defendant pleads a Fine to the King and his Heirs Males of his Body, whereby the King entred and was ſeiſed in Tail, if the Plaintiff confeſſes the Fine and ſays the King entred and was ſeiſed in Fee, there need not be a Traverſe of the Seiſin in Tail; for it is Matter of Law. *R. Pl. Com.* 230. *b.*

So, in Trover, if the Defendant pleads a Seiſure, *as Priſage*, to the King's Uſe, there is no Need to traverſe the Converſion; for he confeſſes the Seiſure, and whether it be a Converſion is Matter of Law. *R. Yel.* 200.

So, in Treſpaſs, if the Defendant pleads a Sale in a Market, he need not traverſe the Plaintiff's Property. 5 *H.* 7. 14. *a.*

So, if he pleads Seiſure as a Waife or Wreck. *Ibid.*

So, to an Avowry for Rent by Preſcription, if the Defendant pleads Unity of Poſſeſſion, there is no Need to traverſe the Preſcription; for it is Matter of Law, whether Unity extinguiſhes it. *Ibid.*

So, if the Defendant pleads that the Plaintiff and his Blood have been Villains Time whereof, *&c.* the Plaintiff replies that he is a Baſtard, he need not traverſe the Preſcription. *Ibid.*

So, in *Quare Impedit*, if the Plaintiff alledges Seiſin in King *Edward*, and that he died ſeiſed, and the Rectory deſcended, *&c.* if the Defendant pleads an Appropriation by King *Edward*, he need not traverſe the Dying ſeiſed. *R. Pl. Com.* 496. *a.*

(G. 6.) Or a Matter of Record.

So, if a Man alledges a Matter of Record, there ought not to be a Traverſe to it; for it cannot be tried by the Country: As, in Debt upon a Recovery in an Inferior Court of Record, if the Defendant traverſes the Recovery, it is bad. *R. per* 3 *J.* 1 *Lev.* 193.

In *Scire Facias* againſt Bail in Error, who plead *Quod Judicium pendet Indeterminatum*, if the Plaintiff traverſes it, it is bad; for it muſt be determined by the Record. *R. Sal.* 521.

(G. 7.) Or not triable.

So, if he alledges a Matter of Fact, which is not triable: As, an Intent or Deſign to make, it is not traverſable; becauſe it cannot be tried: As, in Waſte, if the Defendant pleads an Aſſignment, and the Plaintiff replies that the Aſſignment was contrary to the *St.* 11 *H.* 6. 5. to the Intent that the Plaintiff ſhould not know againſt whom to bring his Action, and that the Defendant continued the Poſſeſſion; Traverſe that the Aſſignment was not made to the Intent, *&c.* is bad; for he ought to traverſe the Pernancy of the Profits. *R.* 5 *Co.* 77. *b.*

So a Traverſe, that he uſed a Garden *ſecundum veram Intentionem Indenturæ*, is bad; for the Intent was not traverſable. *R.* 3 *Lev.* 167.

So, in an Action, *quare retinuit Canem ſciens ad mordendum Oves conſuet'* the *Sciens* is not traverſable, but muſt be given in Evidence. *R.* 1 *Rol.* 4. *l.* 45.

Yet a Traverſe, that he arreſted *Virtute Warranti*, is good. *Semb.* 1 *Sand.* 23.

So a Traverſe of an Entry by Command, where by Inducement the Command appears material. *R. Cro. El.* 463.

So a Plea, that he left Money with the Plaintiff *ea Intentione* that he ſhould pay, is good; for he may traverſe *quod non reliquit Modo et Forma*. *R. Skin.* 397.

(G. 8.) Or not expreſly alledged. *Vide Poſt*, (G. 13.)

So a Matter not expreſly alledged need not be traverſed: As, if the Defendant pleads a Grant, uſed to be made, of an Office to ſuch Perſon or Perſons as *B.* pleaſed, and the Plaintiff replies that it uſed to be granted to one Perſon only, he need not traverſe to ſeveral; for it is not expreſly alledged. *R.* 10 *Co.* 59. *a.*

If the Plaintiff alledges that the Dean, Archdeacon and Chapter of *B.* leaſed to him, and the Defendant pleads that the Dean and Chapter of *B.* leaſed to him *Abſque hoc* that there is ſuch a Corporation, as Dean, Archdeacon and Chapter of *B.* it is not good. *Semb. Lane* 18.

So, if a Man traverſes a Matter not alledged, it is bad: As, if a Breach of Covenant be aſſigned, that he did not pay the Salary of an Office, and the Defendant traverſes that he did not receive the Profits of the Office. *R.* 2 *Vent.* 79.

So, if the Defendant juſtifies by Proceſs out of an Inferior Court, the Plaintiff cannot traverſe that the Matter aroſe out of the Juriſdiction; for it was not alledged. *R. Lut.* 1560.

So, in Treſpaſs for cutting down Trees, if the Defendant ſays that the Bailiff appointed the Taking of Trees for Repairs, for which he took thoſe Trees; Traverſe, that he did not appoint thoſe, is bad; for this was not alledged. *R. Lut.* 1480.

(G. 9.) Or if there be a good Iſſue before.

So if it be a good Iſſue by an expreſs Affirmative and Negative, there ought not to be a Traverſe: As, in an *Audita Querela* to avoid Execution on a Statute, alledging, that *obtulit* the Money at the Day of Payment; if the Defendant pleads that at ſuch Day he demanded it, and no one was ready to pay, he ought not to traverſe *Abſque hoc quod* Plaintiff *obtulit*; for there was an Iſſue before. *R. Cro. El.* 755. But it appears that the Plea was bad in another Point. *Yel.* 38. 2 *Cro.* 13.

But in order to take Iſſue on a ſingle Point, after an Affirmative and Negative, a Traverſe may be allowed: As, where the Defendant pleads another Action depending for the ſame Cauſe, if the Plaintiff replies, that they are ſeveral Cauſes *Abſque hoc* that it was for the ſame Cauſe, it is good. *R. on a ſpecial Demurrer.* 1 *Vent.* 101. *Ray.* 199. 1 *Mod.* 72.

(G. 10.) Of what Things a Traverſe ſhall be.

(G. 10.) Of the moſt material Thing.

A Traverſe ought to be of the moſt material Thing and the Effect of the Bar: And therefore in Debt for Rent on a Leaſe for Years, if the Defendant pleads a Deſcent to *A.* who was diſſeiſed by the Leſſor, but after the Leaſe and before any Rent due entred, the Plaintiff ought to traverſe the Diſſeiſin not the Deſcent. *R. Mo.* 539.

So, in Treſpaſs, if the Defendant pleads that *A.* being ſeiſed made a Leaſe to him, the Plaintiff ſhews that after the Diſſeiſin of *A.* his Father was ſeiſed and died ſeiſed, and the Land deſcended to himſelf, he muſt traverſe the Leaſe. *R. Mo.* 574. 6 *Co.* 24. *a.*

So, if the Surrender of a Copyhold into the Hands of *A.* the Plaintiff's Steward be alledged, the Plaintiff ought to traverſe the Surrender, not, that *A.* was not his Steward. *R. Cro. El.* 260.

So, in *Quare Impedit*, the moſt material Point ought to be traverſed. *D.* 1 *Rol.* 235. *R. Lit.* 15. *R. Cro. Car.* 61, 105, 586. *R. Vau.* 10, *&c.* 56, *&c. Lut.* 1630.

In Treſpaſs, if the Defendant pleads that the Land was demiſed to *A.* who ſet out his Tythes, whereon he, as Parſon, took them, the Plaintiff muſt traverſe the Taking as Tythes, and not the Demiſe. *R. Jon.* 89, 90.

If the Defendant pleads a Gift to his Anceſtor in Tail and ſeveral Deſcents, whereby the Land came to him; if the Plaintiff confeſſes the Gift and alledges a Feoffment by the Donee, under which he claims, and traverſes that the Donee died ſeiſed, it is bad; for he ought to traverſe the laſt Dying ſeiſed, for there might be a Remitter. *R. Dy.* 107. *a.*

In Debt upon a Bond for Appearance *Oct. Martini*, if the Defendant pleads the *St.* 23 *H.* 6. and that he was impriſoned by a Writ returnable *Quinden' Martini*; if the Plaintiff replies that he was impriſoned by a Writ returnable *Oct. Mart'*, he ought to traverſe the Impriſonment by Writ returnable *Quinden' Mart. R.* 2 *Lev.* 175.

In Prohibition, on a Libel for the Profits of Land given for Charity, upon Suggeſtion that the Land was given to his own Uſe, if the Defendant pleads a Gift for Charity, and traverſes the Gift to his own Uſe, it will be good. *R.* 2 *Bul.* 20.

[In Prohibition Plaintiff declared, ſuggeſting that Defendant had no Juriſdiction, ſetting out that the Dean and Chapter was from a Tranſlation of Prior and Convent, and ſuggeſting that where Dean and Chapter are of Royal Foundation, the Archbiſhop has no Power. The Archbiſhop pleads, and traverſes that the Prior and Convent is of Royal Foundation. On Demurrer, Judgment for Defendant. *Dean of Dublin* v. *Archbiſhop of Dublin*, *P.* 10 *G. Fort.* 329.]

But the Defendant may traverſe any Part of the Declaration, which is material to the Plaintiff's Title: As, if the Plaintiff alledges that *A.* being ſeiſed enfeoffed *B.* who died ſeiſed, and the Land deſcended to his Heir, who demiſed to him, and afterwards *A.* ouſted him and diſſeiſed his Leſſor, and conveyed to the Defendant; the Feoffment, Deſcent, or Diſſeiſin may be traverſed. *Dy.* 366. *a.*

In Treſpaſs, if the Defendant pleads, that before the Treſpaſs *A.* was ſeiſed and leaſed to him, the Plaintiff may traverſe the Seiſin or the Leaſe, for both are material to the Defendant's Title. 6 *Co.* 24. *a.*

So, if he pleads, that *A.* being ſeiſed enfeoffed *B.* who enfeoffed *C.* under whom he claims, the Plaintiff may traverſe Seiſin or any meſne Feoffment, if the Defendant does not claim by any meſne Conveyance from the Plaintiff himſelf. 6 *Co.* 24. *b.*

So, if he pleads that *A.* being ſeiſed in Fee conveyed to *B.* in Tail, under whom the Defendant claims; the Plaintiff may ſay that *D.* being ſeiſed granted to *A.* in Tail, *&c.* and may traverſe that *A.* was ſeiſed in Fee, or the Conveyance in Tail. *R.* 2 *Cro.* 681.

If he ſays that *A.* being ſeiſed leaſed to him, and afterwards diſſeiſed him and leaſed to the Plaintiff, he may traverſe the Demiſe to the Defendant, or the Diſſeiſin. *R. Cro. El.* 798.

So, if the Plaintiff alledges a Title, when he need not, he gives the Defendant the Advantage of traverſing: As, in Replevin, if the Defendant avows *Damage feaſant* in *Black Acre*, and the Plaintiff in Bar ſays he was ſeiſed in Fee of a Cloſe, of which the Defendant ought to repair the Fences, and for Default, *&c.* the Defendant may traverſe his Seiſin in Fee. *Per* 3 *J. Wind. dubitante. Dy.* 365. *Vide Poſt*, (G. 16.)

In Ejectment on the Demiſe of *B.* if the Defendant pleads, that *B.* enfeoffed *A.* and the Eſtate deſcended to his Heir, who demiſed to him, and then *B.* diſſeiſed, *&c.* the Plaintiff may traverſe the Feoffment to *A.* or the Deſcent, tho' it need not be alledged. *Dy.* 366. *a.*

In Replevin, the Defendant ſays that *B.* was ſeiſed in Fee, which deſcended to *A.* and avows for a Rent-charge granted by *A.* the Plaintiff ſays that *B.* was ſeiſed in Tail, which deſcended to *A.* and he granted and died, *Abſque hoc that B. was ſeiſed in Fee*, the Traverſe of the Seiſin in Fee by *B.* is good, tho' the Seiſin by *A.* was more material. *R.* 2 *Cro.* 44. *Yel.* 54.

So alſo, if two Points are material, the Defendant may traverſe one or the other: As, in Treſpaſs, if the Defendant pleads that *A.* was ſeiſed and demiſed to him, the Plaintiff may traverſe the Seiſin or Demiſe. *R. Hard.* 317.

So, in Debt upon a Bond for Appearance, if the Defendant pleads the *St.* 23 *H.* 6. 10. and that he was arreſted by a Writ returnable at another Day, and the Plaintiff replies that it was upon a Writ returnable on the firſt; either the one or the other Writ is traverſable. *Semb.* 1 *Sand.* 22. 1 *Lev.* 192. 2 *Lev.* 174.

In Treſpaſs, if the Defendant ſays that *A.* was ſeiſed in Fee, and being outlawed, and found by Inquiſition, *&c.* the Defendant entred upon a *Levari*; the Plaintiff replies that *B.* being ſeiſed demiſed to him, he may traverſe the Seiſin of *A.* or that the Land was not found by Inquiſition. *R. Hard.* 316.

In

In an Information for an Intruſion, if the Defendant ſays that the King by Patent granted to *A.* who, being ſeiſed in Fee, enfeoffed the Defendant, the Attorney General may traverſe the Grant or Feoffment, but not that *A.* was not ſeiſed in Fee; for that is the Conſequence of the Grant. *Sav.* 58.

So, if the Defendant does not rely on the moſt material Matter, but goes to another Point, he gives the Plaintiff the Advantage of traverſing it: As, in an Action for Diſturbance of Common, if the Defendant pleads that he is Lord of the Soil and put Rabbits there, and preſcribes for a Warren, tho' he might juſtify, as Lord, the putting Beaſts of Warren on the Common; yet when he goes on and preſcribes for a Warren, the Plaintiff may traverſe the Preſcription. *R. Lut.* 108.

[In Treſpaſs, if Defendant juſtifies cutting a Beam, whereby Tiles are thrown down, and the Replication traverſes its being previous, it is not *ad idem.* and therefore bad. *Humphreys* v. *Churchman*, *T.* 9 *G.* 2. *B. R. H.* 289.]

(G. 11.) What Thing is traverſable.

And therefore any Fact, which appears to be material, is traverſable, tho' it be only Suggeſtion: As, in Prohibition, a Suggeſtion of a Refuſal by the Spiritual Court of a Plea (which ought to be allowed) in a Suit there for Tithes, or other Matter of their Cogniſance, is traverſable, otherwiſe their Juriſdiction in any Caſe might be taken away by ſuch a Suggeſtion. *R.* 2 *Co.* 45. *a.*

Otherwiſe, where the Refuſal is not the Cauſe of the Prohibition. *R. Mo.* 425.

So any Surmiſe, which takes away the Juriſdiction of the Court, is traverſable. *Cro. El.* 511.

So Place, or Time, where it appears to be material, is traverſable. *Vide Ante*, (G. 2.)—*Poſt*, (G. 12.)

And therefore in Replevin, a Place where, &c. muſt be aſſigned; for it is traverſable. *R. Hob.* 16.

So the Conſideration in *Aſſumpſit* is traverſable, where it is Executory. *D. Cro. El.* 201. *Hob.* 106. 1 *Rol.* 43.

Otherwiſe, if the Conſideration be executed. *D. Cro. El.* 201. *Hob.* 106. 1 *Rol.* 43. *R.* 1 *Rol.* 401.

So Conveyance to the Action, where it appears to be material, is traverſable: As, in an Action for Words, if the Plaintiff alledges that he took an Oath before the Mayor of *London*, and the Defendant ſaid, *you are forſworn*, that he took an Oath before the Mayor is traverſable. *R. Cro. El.* 169. *D.* 1 *Rol.* 43.

So, where both Parties make Title by the ſame Perſon, the Conveyance is traverſable. *D.* 2 *Rol.* 362.

So, in Replevin, generally, it is not traverſable that he is not Bailiff, if the Defendant makes Cogniſance as Bailiff. *Bro. Tit. Bailiff* 1. 26 *H.* 8. 8. *b.*

Nor in Treſpaſs, if he juſtifies as Bailiff. 33 *H.* 6. 3. *Per* 3 *J.* 1 *Rol.* 46. *but Rol. makes a Quære.*

Yet, if it appears to be material, it is traverſable: As, if it be pleaded, that he did it by the Command of another. *R.* 1 *Leo.* 50.

Or, without the Privity of his Maſter. *R.* 3 *Lev.* 20.

So, that he did it voluntarily, is traverſable, where it appears to be material: As, in Debt for a Fee upon a voluntary Acceptance of *Knighthood*, if the Defendant pleads, that he accepted it by the Command only of the King, he muſt traverſe that he accepted it voluntarily; for this is the Eſſence of the Action. *Semb. Lut.* 381.

So, the Intention is traverſable, where it appears to be material: As, if a Payment to *A.* to the Intent that he ſhould pay Rent in Arrear, be alledged in Bar to Covenant by *A.* for Non-payment of Rent in Arrear to *B.* that he paid *A.* to ſuch Intent may be traverſed. *R.* 1 *Sal.* 196.

So, if the Defendant in Treſpaſs pleads *Molliter Manus impoſuit*, it is traverſable. *R. Lut.* 1436.

So a *Que Eſtate* is traverſable, where it is material, tho' both Parties do not claim from the ſame Perſon. *Bro. Que Eſtate* 8, 11, 35, 36, 37.

[In

[In Debt for Annuity, the Demand is not traverſable, tho' there is a Covenant to pay if demanded perſonally; for the Grant is Subſtantive, and the Covenant is Subſtantive. *Hope* v. *Colman*, *H.* 4 *G.* 3. 2 *Wilſ.* 221.]

(G. 12.) But Traverſe of an Immaterial Thing is bad.

But Traverſe of a Thing not neceſſary to be alledged is bad: As, in a *Scire facias* for Reſtitution of Money recovered by a Judgment, which Judgment was afterwards reverſed, if the Defendant pleads Payment *abſque hoc* that he is *adhuc poſſeſſionatus de Denar' prædict'*, the Traverſe is bad; for it was not neceſſary to be alledged in the Declaration, that the Defendant *fuit adhuc poſſeſſionat' inde*. *R. Cro. Car.* 328.

So, in an Action for an Eſcape, if the Plaintiff alledges that he voluntarily permitted *A.* to eſcape, and the Defendant pleads *Freſh Purſuit*, he ought not to traverſe, that the Eſcape was voluntary; for that was not neceſſary to be alledged. *R.* 1 *Vent.* 211, 217. *Agr. Lut.* 382.

[If on falſe Impriſonment, Defendant juſtifies under a Proceſs *quæ eſt eadem*, *&c.* and traverſes being guilty *aliter*, *&c.* it is unneceſſary. *Courtney* v. *Satchwell*, *P.* 12 *G. Str.* 694.]

So, in Trover for a Horſe ſold, and the Money converted to his own Uſe, the Defendant ought not to traverſe the Converſion of the Money. *R. Cro. El.* 555.

In *Aſſumpſit* on a Charterparty, where the Agreement is to ſail with the firſt fair Wind, he ought not to traverſe that he did not ſail with the firſt fair Wind; for it is not material: If he performed the Voyage, it is ſufficient. *Hard.* 69.

So Traverſe of a Place or County, where it is not material, is bad: As, in Treſpaſs, *&c.* if the Defendant juſtifies at another Place or County, and traverſes the Place alledged, where the Place is not material, it is bad; for he muſt plead his Juſtification in the ſame Place. *Co. Lit.* 282. *b.* 1 *Leo.* 39. *Cro. El.* 184, 705. *R. Cro. El.* 842. *R.* 1 *Rol.* 395, 396. *Adm. Lut.* 1437. 1 *Sal.* 173. *R. Cro. El.* 667. *R.* 2 *Mod.* 271. *Sav.* 22, 23.

So, if he juſtifies at another Day, and traverſes the Day alledged, where the Time is not material. *Semb. Hard.* 40.

So, in Treſpaſs, for taking five Cart Loads of Hay, if the Defendant juſtifies for Tithes, and traverſes that there were five Cart Loads of Hay, it is bad; for the Quantity is not material. *R.* 3 *Lev.* 228. *Lut.* 1315.

[If Defendant pleads to a Bond, that Part of the Sum, *ſc.* 1500 *l.* was won by Gaming, and Plaintiff traverſes the 1500 *l.* it is bad. *Colborne* v. *Stockdale*, *H.* 8 *G. Str.* 493.]

[If the Plea ties up Plaintiff to prove the Eſtate alledged in the Declaration, when another Eſtate would do, it is bad. *Palmer* v. *Ekins*, *M.* 2 *G.* 2. *Str.* 817. *Ld. Raym.* 1550.]

But where Place or Time is material, every other Place or Time muſt be traverſed. *Vide Ante*, (G. 2.)

So Traverſe of a Thing alledged after a *viz.* or *ſcil.* is bad. *D.* 1 *Lev.* 245.

So, in Treſpaſs for chaſing Cattle *ita quod* one of them died, Traverſe of what comes after *ita quod* is bad. *R.* 1 *Lev.* 283.

So, if the Defendant alledges a Diſcharge of Tythes by Unity of Poſſeſſion at the Time of the Diſſolution, a Traverſe of the Diſcharge is bad, but it ought to be of the Unity *Ratione cujus fuit* diſcharged, for a Traverſe of the Diſcharge is a Traverſe of the Concluſion only. *R. Mo.* 534.

(G. 13.) Or of a Supposal.

So a Traverſe of a Thing, which is but Suppoſal, is bad: As, if Tenant in *Mortdanceſtor* pleads Jointenancy with the Father of the Demandant, he need not traverſe, that he is ſole Tenant; for this is only ſuppoſed by the Writ. 5 *H.* 7. 13. *a.*

So, if the Defendant pleads *Antient Demeſne*, he need not traverſe that it is *Frank fee*; for this is only the Suppoſal of the Writ. 5 *H.* 7. 13. *b.*

So, in *Aſſumpſit* againſt an Executor, who pleads that his Teſtator was alive at the Time of the Writ purchaſed, he need not traverſe his Death, for it is only ſuppoſed by the Writ and Count. *Lut.* 14.

But Matter neceſſarily included may be traverſed: As, if he pleads that *A.* was ſeiſed, the Plaintiff may alledge Seiſin in *B. abſque hoc* that *A.* was ſole ſeiſed. *R. Mod. Ca.* 158.

(G. 14.) Or Indpcement.

So a Traverſe of Inducement is bad: As, in Debt againſt an Executor, if the Defendant pleads a Judgment, and the Plaintiff replies, that it is ſatisfied, but is continued by Fraud, the Defendant cannot traverſe its being ſatisfied. *R. Lat.* 111. *Hard.* 69.

So, in a *Scire facias* againſt an Executor on a *Devaſtavit* returned, if the Defendant pleads, *Nothing in his Hands*, and traverſes the *Devaſtavit*, it is bad; for it was Inducement only. *R. Hard.* 70.

So, in Covenant, if the Plaintiff aſſigns a Breach, that the Houſe was burnt and not repaired; it is bad, if the Defendant traverſes that the Houſe was not burnt, for it was only Inducement. *Hard.* 70.

In Avowry for Rent, if the Defendant alledges Seiſin *in Dominico ſuo ut de Feodo talliato*, and the Plaintiff in Bar to the Avowry ſays, that he was ſeiſed for Life, he need not traverſe the Seiſin in Tail; for it was Inducement only. *R.* 2 *Jon.* 110. 1 *Vent.* 340.

So, in *Aſſumpſit*, the Conſideration, tho' it be material, is not traverſable. *D. Cro. El.* 201.

Nor, in Trover, the Converſion. *D. Cro. El.* 201. *R. cont. Cro. El.* 97. *for it is the* Giſt *of the Action.*

But, if the Inducement be what intitles the Plaintiff to his Action, it may be traverſed, where the Defendant cannot wage his Law. *Cro. El.* 169.

(G. 15.) Or a Traverſe more large than neceſſary.

So a Traverſe larger than can be denied is bad: As, in Intruſion, if it be alledged that Poſſeſſions of the College of the Dean and Canons of *E.* founded *apud Weſtminſter*, by Diſſolution, *&c.* came to the King, and the Defendant intruded, *&c.* the Defendant ſays, that the Foundation was by another Name, *abſque hoc*, that it was founded *apud Weſtminſter* by the Name alledged, it is a bad Traverſe, becauſe it extends to the Place of the Foundation. *R.* 1 *Leo.* 39.

So a Traverſe of the Surrender of a Copyhold to ſuch a Steward ſuch a Day is bad; for the Day and Steward ought not to be Part of the Iſſue, but the Traverſe ought to be of the Surrender *Modo et Forma. R. Yel.* 122. 2 *Cro.* 202.

So, in an Action on the Caſe for ſtopping three Lights, Traverſe, *that he ſtopped the ſaid three Lights*, is bad; for if he ſtopped any of them, the Action lies. *Yel.* 225.

So, in an Action on the Caſe for his Wages *ab ultimo Dec. uſque* 1 *Nov.* it is bad to traverſe the Service *ab ultimo Dec. ad* 1 *Nov.* for if he ſerved any Part of the Time, he ought to have his Wages for ſuch Time. *R.* 1 *Sand.* 269.

So, on an Indictment for uſing a Trade for three Months, a Traverſe, that he did not uſe it for three Months, is bad; for, if he uſed it only for one Month, he ought to be convicted. *Per Sand.* 1 *Sand.* 312.

So, in an Action on a Policy of Aſſurance, if the Traverſe be, that *Navis et Munimenta, &c.* were loſt, it is bad, for it ought to be in the Disjunctive; for the Plaintiff ought to have Damages for any Part loſt. *R.* 2 *Sand.* 206.

So, in Debt on a Recovery in an Inferior Court *tent'* 1 *May*, Traverſe of a Recovery at a Court 1 *May* is bad. *R.* 1 *Lev.* 193.

So Traverſe of a Requeſt at the Day or Place alledged, is bad; for the Addition of the Day and Place makes it larger than it ought to be. *R.* 3 *Lev.* 41.

Or, of an Aſſignment of a Leaſe at ſuch a Day and Place. *R. Lat.* 92.

So a Traverſe, *that by Indenture A. bargained and ſold*, is bad; for it makes the Indenture Part of the Iſſue. *Semb. Cart.* 218.

In Treſpaſs, if the Defendant juſtifies by *Molliter Manus* to prevent a *Reſcous* of an Execution, in Aid and by the Command of a Bailiff, Traverſe, that it

it was to prevent a *Reſcous* in Aid and by Command of the Bailiff, is bad; for the Command is not material. *R.* 3 *Lev.* 113.

So, in Treſpaſs, if the Defendant juſtifies by *Molliter Manus impoſuit* on his Entry into the Defendant's Cloſe in *S.* and traverſes all Places except in *S.* for he ought to ſay except in the ſame Cloſe. 1 *Rol.* 19.

So, in Trover, if the Plaintiff alledges Converſion by the Sale of the Goods, Traverſe of the Converſion by Sale is too large. *R.* 2 *Leo.* 13.

(G. 16.) Or more narrow.

So a Traverſe, narrower than it ought to be, is bad: As, in an Action for Words, if the Defendant juſtifies as a Counſel at *Weſtminſter*, and traverſes the Speaking at *S.* where it was alledged, at any Time before or ſince, it is bad; becauſe the Traverſe does not go to the Day on which the Speaking was alledged. *R.* 4 *Co.* 14. *b.*

So, in Treſpaſs, if the Defendant pleads that 27 *El.* it was the Freehold of *A.* and traverſes the Time before, but not the Time after; for this ought alſo to be traverſed. *R. Cro. El.* 87.

So, if the Defendant juſtifies by Proceſs to the Sheriff in another County, *abſque hoc*, that it was in the Place alledged, it is bad; for he ought to traverſe all Places, except the County into which the Proceſs goes. *R. Cro. El.* 860.

So, if the Defendant juſtifies by a Leaſe to him for one Year, and that he demiſed to the Plaintiff for a Quarter of a Year, and after the End of the Quarter took the Goods *Damage feaſant*, and traverſes the Taking during the Quarter of a Year, it is bad; for he ought to traverſe all Times before and after his Leaſe for a Year. *R.* 2 *Sand.* 295. 1 *Lev.* 307.

So, in an Action on the Caſe for a Recompence for Service, if the Defendant pleads that he had 8*l. per Ann.* for ſuch a Time, and traverſes the Service *abinde*, it is bad; for perhaps 8*l. per Ann.* was too ſmall a Recompence, and by ſuch Traverſe the Service for that Time is excluded, and the Plaintiff is deprived of an Anſwer to it. *R.* 1 *Sand.* 268.

So, in *Quare Impedit*, where the Plaintiff counts that *A.* being ſeiſed in Fee granted to him, *&c.* if the Defendant pleads that *A.* was ſeiſed only for the Life of *B.* who died before Avoidance, *&c.* and the Plaintiff maintains his Count, and traverſes that *A.* was ſeiſed for the Life of *B.* it is bad; for he ought to traverſe, that *A.* was ſeiſed *Modo et Forma*; for if he was ſeiſed for another's Life only, be it for the Life of *B.* or any other, the Plaintiff's Title is avoided. *Semb. Hob.* 105.

But if a Traverſe be narrower than it ought, and this tends only to the Diſadvantage of the Defendant, or of him, who takes it, it is good: As, in Treſpaſs, if the Defendant juſtifies by a Precept out of an Inferior Court, and traverſes all Times before the Delivery, and after the Return of the Precept; yet, it is good, tho' he might have traverſed before the *Teſte*; for this is to the Defendant's Diſadvantage. *R.* 2 *Lev.* 81.

So a Man, by a preciſe Allegation of an Eſtate, may give an Advantage of traverſing it preciſely, tho' ſuch particular Eſtate is not neceſſary: As, if *A.* alledges that he, being ſeiſed in Fee, put his Cattle into the Cloſe, the Defendant may traverſe the Seiſin in Fee; tho' any Eſtate for Life, or Years, at Will, or Licence of the Owner would enable him to put his Cattle there. *Ry. Dy.* 365. *a.* *Vide Ante*, (G. 10.)

[In Treſpaſs, if Defendant juſtifies under a preſcriptive Right to a Duty, and the like Right to diſtrain for it, and Replication traverſes the Duty, without traverſing the Right to diſtrain, it is well enough. *Griffith* v. *Williams*, *M.* 26 G. 2. 1 *Wilſ.* 338.]

(G. 17.) Traverſe upon a Traverſe.

(G. 17.) Shall not be allowed when the firſt Traverſe is material.

If there be a Traverſe of a Point apt and material to the Plaintiff's Title, he cannot refuſe it and tender another Traverſe: As, if the Plaintiff in *Quare Impedit* counts that the Advowſon was granted to *A.* and *B.* for Years, that *B.*

B. ſurvived and granted to the Plaintiff, whereby, *&c.* the Defendant pleads that *A.* ſurvived and granted to him the next Avoidance, *abſque hoc* that *B.* ſurvived, the Plaintiff cannot waive the Traverſe of the Survivorſhip, and traverſe the Grant of the next Avoidance. *R. Hob.* 105.

So, if he counts of a Seiſin in Fee in *B.* who granted, *&c.* the Defendant ſhews a Seiſin *pur autre Vie*, and traverſes the Seiſin in Fee; the Plaintiff cannot waive the Traverſe, and traverſe that he was ſeiſed *pur autre Vie*. *Semb. Hob.* 104, 105. *Mo.* 869.

So a Man cannot take a Traverſe upon a Traverſe in any Caſe where the firſt Traverſe is material. *D. Vau.* 62.

So, generally, the King cannot take a Traverſe upon a Traverſe, if the firſt Traverſe goes to the King's Title, which does not appear upon Record. *Vau.* 62.

(G. 18.) But Traverſe after a Traverſe is allowed.

But a Traverſe after a Traverſe may be allowed: As, in Treſpaſs in ſuch a County, the Defendant pleads a Concord for Treſpaſs in every other County, and traverſes the County, the Plaintiff may join Iſſue on the County, or traverſe the Concord. *Co. Lit.* 282. *b.* *R. Mo.* 428.

So, in Treſpaſs ſuch a Day, if the Defendant pleads a Licence ſuch a Day, and traverſes all Days before or ſince, the Plaintiff may traverſe the Licence. *Hob.* 104.

So, if he pleads a Feoffment, and traverſes all Days before, the Plaintiff may traverſe the Feoffment. *Ibid.*

Or, a Releaſe, and traverſes all Days ſince, the Plaintiff may traverſe the Releaſe. *Ibid.*

So, if he pleads by a Recovery and Execution in *Sandwich*, and traverſes the Place, the Plaintiff may traverſe the Record of the Recovery. *R. Mo.* 350. *Poph.* 101. *Hob.* 104. *Lut.* 1438.

So, in Debt on a Specialty for Payment of 200*l.* if he did not marry the Plaintiff, and Refuſal alledged, if the Defendant pleads that the Plaintiff refuſed firſt, and traverſes *abſque hoc*, that he refuſed before the Plaintiff refuſed, the Plaintiff may traverſe a Tender by the Defendant to marry. *R. Carth.* 99.

So in all Caſes, where the Traverſe in the Bar takes away the Time or Place alledged in the Declaration, the Plaintiff has his Election to join Iſſue on the Traverſe, or to traverſe the Inducement to the Traverſe alledged by the Defendant. *R. Cro. Car.* 105.

But when the Bar concludes with a Traverſe to the Plaintiff's Title, he muſt maintain his Title, and cannot traverſe the Inducement to the Traverſe: As, in *Quare Impedit*, if the Plaintiff declares that *B.* ſeiſed in Fee preſented, *&c.* the Defendant alledges Title in the King by Inquiſition and traverſes the Seiſin in Fee, the Plaintiff cannot traverſe the Inquiſition. *R. Cro. Car.* 105. *Semb. Lut.* 1630.

Yet, if upon the Pleading it appears, that the firſt Traverſe to the Plaintiff's Title is immaterial, the Plaintiff may traverſe the Inducement to the Traverſe by the Defendant: As, in *Quare Impedit*, the Plaintiff declares of a Seiſin in *A.* who conveyed to *B.* who conveyed to the Plaintiff; the Defendant pleads, that before the Conveyance to the Plaintiff, the Church became void, and *B.* preſented him, and traverſes the Avoidance after the Conveyance to the Plaintiff; the Plaintiff may ſay, that the Church became void after the Conveyance to him, and that *C.* preſented the Defendant, and traverſe that the Defendant was in by the Preſentment of *B.* *Semb. Lut.* 1632.

(G. 19.) So Traverſe upon a Traverſe, when the firſt is immaterial.

So, if the firſt Traverſe be not to the Point of the Action, a Traverſe on a Traverſe may be allowed: As, in Waſte for cutting down and ſelling Trees, the Defendant pleads, that he uſed them for Repairs, and traverſes the Selling, the Plaintiff may waive this, and traverſe the Uſing in Repairs; for the firſt Point was not material to the Action, it was Surpluſage in the Declaration, and ought not to have been traverſed, and the Plaintiff might have demurred on the Traverſe. *Hob.* 104.

So

So in Debt on a Bond for Appearance *Die S. prox' poſt Oct. Pur'* the Defendant pleads an Arreſt upon a Warrant returnable *Die V.* and the *St.* 23 *H.* 6. 10. the Plaintiff replies an Arreſt by a Warrant returnable *Die S.* and traverſes the Warrant returnable *Die V.* the Defendant may afterwards traverſe the Warrant returnable *Die S.* for this only is material and to the Point of the Action. *R. per* 3 *J.* 1 *Sand.* 22. 1 *Lev.* 192.

In *Quare Impedit*, if the Plaintiff ſays *A.* was ſeiſed in Fee and preſented *B.* and granted the next Avoidance to the Plaintiff, the Defendant ſays that *C.* was ſeiſed before *A.* and granted to *A.* for the Life of *D.* who preſented *B.* and then granted the next Avoidance to the Plaintiff, *abſque hoc quod A. Tempore Conceſſionis* was ſeiſed in Fee, the Plaintiff may traverſe the Seiſin for the Life of *D.* *Hob.* 101.

[So, in Prohibition, for that Defendant had petitioned the Court of Common-council who had no Juriſdiction, which belonged to the Court of Mayor and Aldermen, the Defendants plead, that the Common-council have the Juriſdiction, *abſque hoc*, that the Juriſdiction is in the Court of Mayor and Aldermen; the Plaintiff replies, that the Common-council have it not, and concludes to the Country: Defendants demur, for that is a Departure, and Plaintiff ought to have taken Iſſue on the Traverſe. But *per Cur.* the firſt Traverſe was immaterial. Judgment *pro quer.* *King qui tam* v. *Bolton, M.* 5 *G. Afterwards affirmed in Parliament.* *Str.* 117. *Fort.* 349.]

So the King may take a Traverſe upon a Traverſe, tho' the firſt Traverſe be to the Point of the Action, where the Title, upon which the King ſues, appears by Office or other Matter of Record; for the Office, *&c.* is a ſufficient Title for the King, which he ſhall not loſe, if the Defendant does not appear to have a better. *Vau.* 62.

So, on an Indictment for not repairing a Bridge, if the Defendants plead that *A.* ought to repair, and traverſe that the County ought, the Attorney General may reply that the County ought and traverſe that *A.* ought, and, if it be found that *A.* ought not, the Defendants ſhall be found guilty. *R.* 2 *Lev.* 112.

(G. 20.) Inducement to a Traverſe.

A Traverſe ought to be introduced with a proper Title or Inducement. *Semb. Cro. El.* 671. 2 *Cro.* 86.

And, if there be no Inducement to the Traverſe, the Iſſue will be a Negative pregnant. *Semb. Hob.* 321.

And the Inducement ought to be ſufficient in Subſtance: And therefore in Prohibition upon a Suggeſtion of a Diſcharge of Tythes, if the Defendant pleads an Agreement between the Maſter of the Hoſpital of *B.* and the Abbot, that the Lands ſhall be diſcharged only in the Hands of the Abbot, and traverſes the Diſcharge, the Inducement is bad; for it does not ſhew any Title in the Maſter of the Hoſpital to the Tythes, or how he could make ſuch Agreement. *R. Cro. Car.* 266.

So, if the Defendant in his Inducement to the Traverſe ſhews a Defective Title, the Inducement is bad. *R. Cro. Car.* 336.

As, if, in Bar to an Avowry for Rent by the Aſſignee of a Reverſion, the Plaintiff ſhews a Deviſe for Sale, if the Goods are not ſufficient for the Payment of Debts, and a Sale to him before the Aſſignment, and traverſes the Deſcent to the Aſſignor, it is not good, if he does not ſhew the Condition precedent well performed, *viz.* what Debts and what Goods there were, whereby the Court may judge that they were not ſufficient. *R. Jon.* 328.

So a Man cannot make a Part of his Plea an Inducement to a Traverſe of the Reſidue of the Declaration: As, in an Action on the Caſe for ſtopping three Lights, if the Defendant juſtifies for two *abſque hoc* that he ſtopped three, the Traverſe is bad, for the Inducement goes only to Part of the Declaration. *R. Yel.* 225.

So, in an Action on the Caſe for Recompence for his Service, if the Defendant pleads that he ſerved to ſuch a Day, and then departed, *abſque hoc* that he

ſerved to the Time in the Declaration, it is not good; for he makes one Part of the Service an Inducement to the Traverſe of the other. *R.* 1 *Sand.* 268.

So, in a *Scire facias* againſt Bail in Error, who plead a Judgment depending, not determined, the Plaintiff cannot reply that the Judgment is affirmed, *abſque hoc quod pendet indeterminat'*, for this makes a material Part of the Plea Inducement to the Traverſe. *R. Sal.* 520.

But Inducement to a Traverſe does not require ſo much Certainty as another Plea; becauſe, generally, it is not traverſable. *R. Cro. Car.* 442.

When it is traverſable or not. *Vide ante*, (G. 18.)

And therefore if he makes Title as Couſin and Heir, and traverſes the Deviſe, it is ſufficient, tho' he does not ſay, how he is Couſin. *R.* 2 *Cro.* 86.

(G. 21.) When an Inducement is not neceſſary.

But in Ejectment on the Demiſe of *A.* the Defendant pleads that the King, being ſeiſed in Fee, granted to *B.* for Life, who demiſed to *A.* and died, the Plaintiff maintains his Declaration, and traverſes the Demiſe to *A.* for the Life of *B.* this is good without any Title or Inducement; for a Title is not neceſſary in Ejectment or Treſpaſs, and the Plaintiff traverſes the Matter which deſtroys his Title. *R. Cro. El.* 671.

So, in Ejectment on the Demiſe of *A.* if the Defendant pleads that before the Seiſin of *A. B.* was ſeiſed and demiſed to him for Years, whereby he was poſſeſſed till *A.* diſſeiſed *B.* and demiſed to the Plaintiff, Replication, that *A.* was ſeiſed in Fee, with a Traverſe of the Diſſeiſin, is good without more Title or Inducement. *R. Cro. El.* 890.

(G 22.) When the Defect of a Traverſe ſhall be aided.

Default of Traverſe, where the Plaintiff has not fully confeſſed and avoided, is only Form, and aided upon a general Demurrer. *Per And.* 1 *Leo.* 44. *R. cont. per* 3 *J. Rodes acc.* 1 *Leo.* 80, 81. *R. acc. Cro. Car.* 324. *Dub.* 3 *Mod.* 319.

So, if a Man takes a Traverſe, where there is a full Confeſſion and Avoidance, this makes the Plea double, but is aided, as Duplicity, on a general Demurrer. *Semb. Yel.* 151. *Semb. Cro. Car.* 61. *R.* 2 *Vent.* 213. *R. Lut.* 1558. *Agreed Lut.* 1560. *Semb.* 2 *Sand.* 50. *R. Carth.* 166. *Vide Ante*, (E. 2.)

Yet, it will be bad on a ſpecial Demurrer. *R. Lut.* 1457.

So, a Traverſe of a Point, not *the moſt* material, if it is material, will be aided after Verdict. *R. Yel.* 54.

So a Traverſe of an Immaterial Point. *Semb. Cro. Car.* 328. *Semb.* 3 *Lev.* 228.

And now by the *St.* 4 & 5 *An.* 16. No Exception ſhall be for an Immaterial Traverſe, unleſs ſhewn for Cauſe of Demurrer.

So a bad and improper Traverſe. 1 *Sand.* 268. *R. after Verdict. Cro. El.* (456.) *R. Cro. El.* 161.

So a Traverſe too large. *Cont. per* 3 *J.* 2. *acc. Yel.* 122.

Or too narrow. *R.* 2 *Sand.* 5. *R. Carth.* 165, 166.

So a Traverſe after a Traverſe. *Semb.* 1 *Sand.* 21.

So Want of an Inducement to a Traverſe. *Hob.* 316, 321.

So Want of a Traverſe not eſſential, ſhall be aided by Pleading over to other Matter. *R.* 2 *Jon.* 111.

But Defect of a Traverſe, where there are two Affirmatives, is not aided on a general Demurrer, for, by Default of an Iſſue, the Right cannot appear to the Court. *Hob.* 233.

[So in Treſpaſs for breaking his Wharf and Rails, Defendant pleads that *A.* being ſeized of Houſes, he and all thoſe, *&c.* had the Uſe of that Wharf, and juſtifies under him, that he could not uſe it, and by his Orders he broke, *&c.* Plaintiff replies *de Injur. ſua propria abſque tali Cauſa*, he did ſaid Treſpaſs; and then goes on *abſque hoc*, that *A.* and all thoſe, *&c.* ought to have the Uſe of ſaid Wharf; and Judgment for Defendant on Demurrer; for the Traverſe is double, firſt

first traverſing all the Matters in the Plea, and then the Preſcription. *Rains* v. *Orton*, *H.* 10 *G. Fort.* 379.]

[In Treſpaſs, for falſe Impriſonment on the 1ſt *October*, and from thence for ſeven Months, Defendant pleads Outlawry and Warrant, by which Plaintiff was taken at *York*, and continued in Priſon, which Arreſt and Impriſonment *ſunt ead. Inſult. et Impriſonam, &c. abſque hoc, quod culp. in Middleſex ſeu alibi* out of *York*, or at any Time before the Delivery of Writ, or after the Return; and Judgment for Plaintiff, on Demurrer; for *quæ eſt ead. Tranſgreſſio* is good without Traverſe; and he ſays it is the ſame Impriſonment, *viz.* for ſeven Months, and yet in the Traverſe leaves out all the Time between the Delivery and the Return. *Affirmed in B. R. Carvil* v. *Manly*, 9 *G. Fort.* 379.]

[In Treſpaſs, for falſe Impriſonment 1ſt *April*, Defendant juſtifies by a Precept from the Sheriff's Court, he took him 20th *March* before, which is the ſame Aſſault and Impriſonment, *abſque hoc*, that he was guilty before granting, or after Return, or out of the Juriſdiction. Judgment for Plaintiff, for the Traverſe is double, *que eſt ead' tranſgreſſio* is a Traverſe, and then another, *abſq. hoc. Courtney* v. *Satchwell*, *P.* 12 *G. Fort.* 389.]

So, if a Traverſe be neceſſary to make a good Bar, the Omiſſion will be fatal on a general Demurrer. *R.* 2 *Mod.* 60.

So, if the Replication does not traverſe the Matter of the Bar, which is not fully confeſſed and avoided, the Defect ſhall not be aided by a general Demurrer. *R.* 1 *Leo.* 80, 81. 1 *And.* 169. *Sav.* 88.

(H) Rejoinder.

A Rejoinder is the Defendant's Anſwer to the Replication.

And ought not to depart from the Bar. *Co. Lit.* 303. *b.*

What will be a Departure. *Vide Ante*, (F. 7, *&c.*)

And therefore, if the Rejoinder does not ſupport the Bar, it will be bad on Demurrer. 2 *Mod. Ca.* 343.

[If to *Aſſumpſit* Defendant pleads Tender before exhibiting the Bill, Plaintiff replies a *Latitat* ſued out before the Tender, Defendant rejoins, admitting the Promiſe before exhibiting the Bill, but denying the Promiſe before the iſſuing the *Latitat*, it is good; for Plaintiff here conſiders the *Latitat* as an original Writ. *R. on Demurrer. Wood* v. *Newton. M.* 20 *G.* 2. *Wilſ.* 141.]

If the Plaintiff makes ſeveral Replications, the Defendant muſt rejoin ſeverally to every Replication. *R.* 1 *Sand.* 337.

[The Court will not give Leave to rejoin double, for it is not within the Statute. *Warren* v. *Ivie*, *T.* 5 *G.* 2. *Str.* 908.]

If the Rejoinder denies the ſeveral Matters alledged in the Replication, it is ſufficient that it concludes to the Country at the End, without putting the Matters in Iſſue ſeverally. *R. Lut.* 241. *Vide Ante*, (E. 28, *&c.*—F. 5.)

(I) Surrejoinder.

A Surrejoinder or *Quadruplicatio* is the Plaintiff's Reply to the Defendant's Rejoinder.

(K) Rebutter.

REBUTTER is ſo named from *Rebouter*, which ſignifies to repel. *Co. Lit.* 303. *b.*

(L) Surrebutter.

A Surrebutter is the Reply to the Rebutter.

(M) When Judgment ſhall be.

(M. 1.) Upon a bad Count.

When for Default. *Vide Poſt*, (Y. 1.)

IF Pleading be bad, Judgment ſhall be againſt him who made the firſt Default: As, if a Count or Declaration be bad, there ſhall be Judgment againſt the Plaintiff; tho' the Bar is inſufficient: As, if Debt be by an Adminiſtrator *durante minore Ætate* or an Executor after the Executor has obtained his full Age, tho' the Plea in Bar be inſufficient; yet there ſhall be Judgment againſt the Plaintiff, for it appears he has no Cauſe of Action. *R.* 5 *Co.* 29. *a.*

When upon *Nil dicit*, *Vide Ante*, (E. 42.)

Or upon Confeſſion. *Vide Poſt*, (Y. 2.)

But, if it appears that the Plaintiff has no Cauſe of Action by the Plea only and not by the Declaration, and the Plea is defective and bad, the Plaintiff ſhall have Judgment: As, in Treſpaſs *Quare Clauſum fregit & dejecit* his Hurdles affixed to his Freehold, if the Defendant pleads that the Place where, *&c.* is *Communis Platea* and preſcribes for ſetting Stalls there, *&c.* but the Preſcription is bad, the Plaintiff ſhall have Judgment; tho' he has no Cauſe of Action, if it was *Communis Platea*. *R.* 1 *Lev.* 184.

The Judgment ought to be entred, *Ideo conſideratum eſt per Cur' quod, &c.*

But if the Judgment be (where the Jury find Damages to 38 *l.* *Quod recuperet Damna ſua prædicta per Jur' aſſeſs ad* 37 *l.* *nec non, &c.* it will be well; for the Words *per Jur' aſſeſs' ad* 37 *l.* ſhall be Surpluſage. *R. Jon.* 171.

If there be Judgment on a bad Count upon a Demurrer on Motion in Arreſt of Judgment, it ſhall be, *Quod* Plaintiff *Nil capiat quia Narratio inſufficiens*. *Mod. Ca.* 15.

If the Defendant or Plaintiff pleads over, he ſhall not afterwards take Advantage of any Defect in the Plea of the other Party, which would be aided on a general Demurrer. *Per Holt, Sal.* 519.

(M. 2.) Upon a bad Plea.

[If the Plea is naught, and the Replication likewiſe, and the Defendant demurs, Judgment ſhall be for the Plaintiff; for the firſt Fault was in the Plea. *Woodward* v. *Robinſon*, *P.* 6 *G. Str.* 302.]

So, if the Plea be defective, and the Plaintiff makes an idle Replication, but the Defendant does not rely thereon, there ſhall be Judgment againſt the Defendant. 4 *Co.* 84. *a.* *Cro. El.* 815.

So, if the Plaintiff's Replication be double. *R.* 3 *Lev.* 244.

So, if to a Debt upon a Bond to ſtand to an Award, if made *ſuper vel ante* 7 *Maij*, and, if not, to an Umpirage, the Plea be, that no Award was made *ante* 7 *Maij* without ſaying *vel ſuper*, if the Plaintiff replies, that there was an Umpirage, but aſſigns an inſufficient Breach, there ſhall be Judgment for the Plaintiff, for the Plea was not cured by the Replication. *Per* 3 *J. Keeling cont.* 1 *Sid.* 336.

[If on Debt on Bond payable 23d *March*, Defendant pleads Payment on the 22d, and Plaintiff replies, he did not pay either on the 22d or 23d, or at any Time after making the Bond, and Defendant demurs for Duplicity, Judgment ſhall be for Plaintiff; for the Plea is ill firſt, and if Plaintiff had gone to Iſſue upon the Plea, the Verdict muſt have been ſet aſide. *Jernegan* v. *Harriſon*, *T.* 6 *G. Str.* 317.]

So, if the Plea does not anſwer to the whole Declaration, whereto the Plaintiff demurs, there ſhall be Judgment againſt the Defendant for his bad Plea, and not againſt the Plaintiff for the Diſcontinuance. *R.* 1 *Rol.* 406. *Cont.* 1 *Rol.* 176. *R.* 2 *Bul.* 288.

So, if the Plea be inſufficient in Subſtance, or confeſs the Point of the Action, there ſhall be Judgment againſt the Defendant; tho' the Replication be immaterial and the Defendant demurs to it. *R.* 8 *Co.* 120. 133. *b.* *R.* 9 *Co.* 110. *b.*

As, if the Plea be uncertain. *R. Poph.* 209.

So, tho' Iſſue joined and Verdict for the Defendant. *Hob.* 56.

For the Court will judge upon the whole Record, and therefore where the Verdict concludes *ſi ſic, &c.* for the Defendant or for the Plaintiff; yet the Defendant

fendant or Plaintiff ſhall not have Judgment, if it appears on the whole Record that he has not a Title. *R. Mo.* 105. *R. Mo.* 269. *Vide Poſt*, (S. 38, 40.)

[If Defendant by his Plea ſets out a bad Title to an Office, it amounts to a Confeſſion of the Uſurpation, tho' he denies it, and the Court will give Judgment againſt him. *Rex* v. *Philips*, *M.* 7 *G.* *Str.* 394.]

[If the Plea makes the Place where the Bail-bond was given material, it is naught, and there ſhall be Judgment for the Plaintiff. *Belgardine* v. *Preſton*, *P.* 8 *G.* *Fort.* 365.]

[If Plaintiff in an Action on a Bail-bond, ſets out that the Bond was to appear at the Return of the Writ, and Defendant pleads the *Stat.* *H.* 6. and ſays it was a Bond made for Eaſe and Favour; it is a bad Plea, for he ought to have traverſed the Condition ſet out by Plaintiff; and here are only two Affirmatives, which cannot make an Iſſue. *Peedle* v. *Chriſtmas*, *P.* 12 *G.* *Fort.* 365.]

So, if the Plea is bad, and Iſſue found thereon for the Plaintiff, there ſhall be Judgment againſt the Defendant, tho' it does not appear that he is chargeable: As, in Debt againſt an Executor, who pleads another Judgment *at a Day to come*, and Iſſue, that it was *per Fraudem*, is found for the Plaintiff, tho' it be impoſſible, yet the Plaintiff ſhall have Judgment. *R. Cro. Car.* 25.

So, if the Defendant by his Avowry deſtroys the Plaintiff's Title, but gives him another Title, there ſhall be Judgment for the Plaintiff; for upon the whole Record it appears the Plaintiff has Title. *R.* 8 *Co.* 93. *a.*

So, if the Defendant pleads a good Plea in Bar, but the Plaintiff avoids it by his Replication, there ſhall be Judgment for the Plaintiff. *R. Lut.* 1380.

[If Matter that ought to have been pleaded in Abatement is pleaded in Bar, it is bad. *White* v. *Willis*, *P.* 32 *G.* 2. 2 *Wilſ.* 87.]

[So if Executor ſued as Adminiſtrator pleads his being Executor in Bar, and not in Abatement, and Plaintiff demurs, Plaintiff ſhall have Judgment. *Stocker* v. *Heath*, *P.* 8 *G.* 2. *B. R. H.* 104.]

[In Treſpaſs for impounding a Mare, if the Defendant juſtifies for that the Mare was mangy, it muſt alledge that ſhe was ſo when put in, or that Plaintiff had Notice of it before the Diſtreſs, or it is bad. *Semb.* *Palmer* v. *Stone*, *T.* 32 & 33 *G.* 2. 2 *Wilſ.* 96.]

[To Treſpaſs for entering Cloſe, treading down the Graſs there, and *eating other Graſs with Cattle*; if Defendant pleads not guilty to the Whole, and as to entering and treading, juſtifies on two Preſcriptions, and there is a Verdict for Plaintiff on the general Iſſue, and for Defendant on the other. Plaintiff ſhall have Judgment; for eating the Graſs is not covered by the Juſtifications. *Knight* v. *Lillo*, *T.* 31 *G.* 2. 2 *Wilſ.* 81.]

(M. 3.) Upon a bad Replication.

But, if the Plaintiff does not demur to the Defendant's defective Plea, but replies, and by his Replication ſhews that he has no Cauſe of Action, there ſhall be Judgment againſt the Plaintiff: As, in Debt on a Bond, if the Defendant pleads Performance, and the Plaintiff aſſigns an inſufficient Breach, there ſhall be Judgment againſt him, tho' the Plea was defective. *R.* 2 *Cro.* 133. 8 *Co.* 133. *b.* *R. Lut.* 609. *R. Hob.* 14.

So, in an Action for an Eſcape, if the Bar is defective, but the Replication ſhews no Cauſe of Action, there ſhall be Judgment againſt the Plaintiff. *R.* 3 *Co.* 52. *b.* *R.* 8 *Co.* 120. *b.* *R.* 8 *Co.* 133. *b.* *Poph.* 41, 42.

So in Ejectment. *R. Hob.* 128.

And where the Replication ſhews that the Plaintiff has no Cauſe of Action, it ſhall not be aided by a Rejoinder which tenders Iſſue upon another Point and admits a Cauſe of Action. 1 *Lev.* 195.

Yet, where the Replication is imperfect or defective in the Manner of Pleading, it ſhall be aided by a Rejoinder, which admits the Thing miſpleaded, and tenders Iſſue on another Point. *R.* 1 *Lev.* 195.

[If there is a bad Replication of which Defendant gives Notice, and Plaintiff goes on to Trial, and has Verdict without Defence, it ſhall be ſet aſide. *Barnes* 457.]

(M 4.) At what Time Judgment ſhall be ſigned.

[Final Judgment muſt be entered immediately. *Barnes* 259.]

[Plaintiff is not obliged to proceed to final Judgment next Term after Trial; therefore if Verdict in *Hil. vac.* Defendant renders himſelf in *Eaſter*, and Plaintiff might have ſigned final Judgment, but does it not till *Trinity*, and in *Michaelmas* charges Defendant in Execution, it is well, and Defendant is not intitled to *Superſedeas*. *Pierce* v. ——*H.* 24 *G.* 2. 1 *Wilſ.* 297.]

So, if a Cauſe reſts four Terms, without any Proceeding, Judgment ſhall not be ſigned without a Term's Notice. *Mod. Ca.* 18.

So, Judgment ſhall not be ſigned after a Verdict or Writ of Inquiry, till four Days excluſive. *R.* 1 *Sal.* 399.

So, there cannot be final Judgment in Real or Mixt Actions without a peremptory Rule on Motion. *R.* 1 *Sal.* 399.

[On a Rule for Plaintiff's Attorney to bring in the Roll, it cannot be delivered by the Counſel to the Clerk of the Papers, the Attorney muſt file it himſelf. *Whiter* v. *Groombridge*, *P.* 8 *G.* 2. *B. R. H.* 104.]

[The Court will not order Plaintiff's Attorney to bring in and enter up Judgment, on the Motion of a Stranger, tho' in order that it may be uſed as Evidence on a penal Statute. *Hudſon* v. *Smith*, *M.* 11 *G.* 2. *Andr.* 22.]

But in Perſonal Actions Judgment may be ſigned without Motion. 1 *Sal.* 399.

So in Real Actions on a Plea in Abatement. *Ibid.*

So, if the Plaintiff does not enter up Judgment after Verdict for him, becauſe the Damages are ſmall, the Defendant may. *Hard.* 219.

So, if the Defendant dies after the Verdict and before Judgment ſigned, Judgment may be ſigned within two Terms after. 1 *Sal.* 401.

[If Plaintiff (in an Action for Arrears) dies before Judgment on a ſpecial Verdict, Judgment may be entered as of the Term in which the *Poſtea* is returnable. *Trelawney* v. *Biſhop of Wincheſter*, *H.* 30 *G.* 2. 1 *B. M.* 219.]

[On a Caſe reſerved for the Conſideration of the Court, if Defendant dies pending the Argument, Judgment ſhall be entered *nunc pro tunc*. *Aſtley* v. *Reynolds*, *M.* 5 *G.* 2. *Str.* 915.]

[If Defendant dies after Judgment pronounced for him, the Court will give leave to enter it up as of that Term, tho' the Application is ſix or ſeven Terms after. *Mayor of Norwich* v. *Berry*, *H.* 9 *G.* 3. 4 *B. M.* 2277.]

[If Defendant in Error dies, pending a *Cur. adviſare vult*, the Court will give leave to enter Judgment *nunc pro tunc*. *Cumber* v. *Wane*, *P.* 7 *G.* *Str.* 426.]

If Judgment be ſigned or pronounced in any Term, it may be entred upon a Roll of the ſame Term, at any Time before the Eſſoin Day of the next Term. *Mod. Ca.* 191.

So, if Judgment be pronounced, and the Roll not ingroſſed, it may be done many Years after by Leave of the Court. *Mod. Ca.* 59.

Tho' it be a Judgment in Error on an Indictment for Treaſon, *&c.* *R. Mod. Ca.* 59.

[The Court will not give leave to enter up a Judgment of twenty Years ſtanding, *nunc pro tunc*. *Flower* v. *Earl Bolingbroke*, *M.* 12 *G.* *Str.* 639.]

Yet the Court may ſtay it by Rule, till the Cauſe is examined. *Mod. Ca.* 59.

And the Court do not give Leave to enter it of a precedent Term, but it ſhall be continued till the preſent Term. *Mod. Ca.* 184, 191.

[If no Fraud appears in Plaintiff, but the Judgment has not been docketed in due Time by Negligence, the Court will not interpoſe to ſet aſide Judgment on Motion. *Barnes* 261.]

(N) Proteſtation.

A Proteſtation is made to the Intent, that the Defendant or Plaintiff may not be concluded by his Plea or Replication, if the Iſſue be found for him. *Co. Lit.* 124. *b.* *Pl. Com.* 276. *b.*

As, in an Action by a Villein againſt his Lord, who pleads in Bar, he muſt at the Beginning of his Plea make Proteſtation, that he is his Villein, otherwiſe, the Plaintiff ſhall be enfranchiſed, tho' the Iſſue be found for the Lord. *Lit. Sect.* 192. 193.

And a Man may plead it in Abatement, or take it by Proteſtation and plead over. *Lit. S.* 193.

So a Man may take a Proteſtation in his Replication: As, in *Aſſumpſit*, if the Defendant pleads an Agreement to take a Bill in Satisfaction, the Plaintiff may ſay, *proteſtando* that there was no Agreement and no Bill given, that it was not ſealed. *R.* 5 *Mod.* 136.

So a Man may take by Proteſtation Matter, which he cannot plead: As, in a Præcipe *in Capite*, the Tenant cannot plead that the Land is holden of *B.* and not of the King, but ſhall make Proteſtation of it.

In an Action for taking Goods of the Value of 5 *l.* the Defendant may make Proteſtation that they were not of more than the Value of 3*s.* 4*d.* *Lut.* 1320.

On an Information the Defendant ſhall take by Proteſtation, that it is *minus ſufficiens*. *Pl. Com.* 1. *a.*

The Proteſtation muſt come after *præcludi non, &c.* and not before. *Pl. Com.* 276. *b.*

But a Proteſtation, repugnant, or inconſiſtent with the Plea, is not good: As, in Replevin for a Taking in *A.* a Proteſtation that he did not take, and a Plea that there is no ſuch *Vill* as *A.* with an Avowry by *Retorn' habendo*, is bad. *Bro. Proteſtation* 1.

So, if the Defendant pleads a Deſcent, which *tolls* Entry, and the Plaintiff *proteſtando* that there was no Deſcent, pleads continual Claim; for he does not acknowledge the Deſcent by the Proteſtation, and confeſſes and avoids it by Plea. *Bro. Proteſtation* 5.

In an Action by an Executor, the Defendant ought not to take by Proteſtation, that the Plaintiff was not Executor, and plead that *A.* was Adminiſtrator, who gave to him; for it is the Effect of the Plea, that the Plaintiff was not Executor. *R. Pl. Com.* 276. *b.*

In *Mayhem*, if the Defendant *proteſtando* that it was *de ſon Aſſault* pleads *Nul Mayhem*. *Kel.* 95. *a.*

Nor an idle and ſuperfluous Proteſtation: As, in an Action by the Executor of *A.* if the Defendant makes Proteſtation that *A.* did not make a Will, and that *A.* did not make the Plaintiff Executor; for if he made no Will, the other Part is included. *Pl. Com.* 276. *b.*

Yet an idle or repugnant Proteſtation does not vitiate the Plea, tho' it be ſhewn for Cauſe of Demurrer; for the Intent of a Proteſtation is, that the Party may not be concluded in another Action. *R. in B. R. inter Sir G. Warburton and— R. by C. B. M.* 9. *Ann.*

The Proteſtation does not avail, if the Iſſue be againſt him: As, if an Iſſue is found againſt a Lord, the Villein ſhall be enfranchiſed, tho' he takes Proteſtation, that he is his Villein. *Co. Lit.* 126. *a.*

Yet, if the Vouchee takes by Proteſtation the Value of the Land, and enters into Warranty; tho' it is found againſt him, the Proteſtation prevents a Concluſion as to the Value of the Land. *Co. Lit.* 126. *a.*

(O) Shewing of Deeds.

(O. 1.) When it ſhall be.

IN all Actions, a Man, who claims by Deed and pleads it, ought to ſay *hic in Curia prolat'* if he is a Party to the Deed, for by the ſhewing of Deeds in Court, the Court are to judge whether they are good. *R.* 10 *Co.* 92. *a.* *Co. Lit.* 35. *b.* *R.* 2 *Cro.* 272. *Yel.* 201.

And therefore, if a Man claims a Villein, or any other Thing which he cannot have without Deed, he ought to ſhew the Deed in Court. *Lit. S.* 183.

So, if a Man alledges an Eſtate of Freehold to be on Condition, he muſt ſhew a Deed thereof. *Lit. S.* 365.

[There is no Caſe to eſtabliſh that Plaintiff may be excuſed from *Profert*, on averring that the Deed is loſt. *Whitfield* v. *Fauſſet*, *H.* 1749. 1 *Vezey* 387.]

(O. 2.) How pleaded. If a Man pleads a Deed, he ought regularly to alledge a *Profert* of the Deed itſelf.

Or of the Record.

And the printed Act is not ſufficient, if he makes a *Profert* of an Act of Parliament in Plea. *R. Sal.* 566.

But by the *St.* 3 & 4 *Ed.* 6. 4 & 13 *El.* 6. the Exemplification or *Conſtat* of Inrolment of Letters Patent, pleaded or ſhewed, ſhall be of like Effect as the firſt Letters Patent, if the ſame had been pleaded or ſhewn.

And therefore it is ſufficient to ſay, *prout per Exempl' Irrotulament'*. 1 *Sand.* 189. *Sal.* 566.

So by the *St.* 10 *Ann.* 18. a Copy of the Inrolment of any Indenture of Bargain and Sale inrolled.

But, if he pleads an Inrolment, he need not ſay before whom the Deed was acknowledged. *R. Pl. Com.* 105. *a.*

And if the Inrolment be not effectual, the other Party may traverſe the Inrolment, and it ſhall be tried by the Record. *Ibid.*

[In Debt on Aſſignment of Bail-bond, *Profert* of the Bond is enough, without ſetting down the Witneſſes Names. *Robinſon* v. *Taylor*, *T.* 13 *G. Fort.* 366.]

(O. 3.) What Deed. So, if a Man pleads Letters Patent to him, or to another, to whom he is privy, or under whom he juſtifies, he ought to ſhew them to the Court. 10 *Co.* 92. *Mo.* 849. *Dy.* 29. *b.*

So, in Debt upon Bond, he muſt ſhew the Bond.

So, where an Action is founded on a Deed, he muſt ſhew the Deed: As Covenant, *&c.*

And he muſt ſhew the Original; for a Counterpart is not ſufficient. *R. Noy* 53.

So, in an Action upon the Caſe for the Profits of an Office, he muſt ſhew the Letters Patent of the Office. *Per* 2 *J. Lat.* 88.

So, in Debt by an Executor, he muſt ſhew to the Court the Letters Teſtamentary. *R. Hob.* 53. *Cont.* if not demanded. 1 *Rol.* 78. *Vide Poſt*, (O. 16.)

[If the Defendant prays *Oyer* of the Letters Teſtamentary, it is ſufficient if the Executor produces an Exemplification of the Probate. *Shepherd* v. *Shorthoſe*, *H.* 7 *G. Str.* 412.]

So, if he pleads Payment with an Acquittance, he muſt ſhew the Acquittance. *R. Sal.* 519.

But he need not ſhew to the Court a Writing not ſealed: As, if he pleads a Warrant of a Juſtice of the Peace, he need not ſay *hic in Curia prolat'*. *R.* 3 *Lev.* 205.

So, if he pleads a Sheriff's Warrant. *D.* 3 *Lev.* 205. 2 *Cro.* 372.

Or an Award; for it is no Deed. *Sti.* 459. *Vide Arbitrament*, (I.)

Or a Policy of Inſurance. 1 *Sid.* 386.

[Plaintiff is not obliged to ſhew a Promiſſory Note or Bill of Exchange, on Motion. *Odiarne* v. *Duke of Grafton*, *M.* 1727. *Bunb.* 243.]

So,

So, tho' it be under Seal, if it be not a Deed: As, a Compoſition with Creditors on the *St.* 8 (or 8 & 9) *W.* 3. 18. *R. Mod. Ca.* 58. *(Vide Ld. Raym.* 967.)

(O. 4.) Where one is Privy.

So, a Man, who claims any Eſtate or Intereſt by a Deed muſt ſhew the Deed, tho' he is no Party to it. 10 *Co.* 92. *a.* *Co. Lit.* 226. *a.*

As, if there be a Releaſe of a Right to Tenant for Life or in Tail, he in Reverſion or Remainder, who pleads it, muſt ſhew the Deed. *Lit. S.* 453.

Or, if it be to him in Reverſion or Remainder, if the Tenant for Life pleads it, he muſt have it in his Hands. *Lit. S.* 452.

So, if a Confirmation be to Tenant for Life, Remainder to *A.* he ſhall not have Waſte or other Benefit by ſuch Remainder, without ſhewing the Deed. *Lit. S.* 573.

So, if the Defendant, being a Tinner, pleads a Privilege granted by Charter of *Ed.* 1. to Tinners not to be ſued out of the Stannaries, he ought to ſhew the Patent for he is privy to it. *R. Mo.* 849.

(O. 5.) Or claims only Part of the Eſtate.

Tho' he has only Part of the Eſtate, which was granted by the Original Deed: As, if an Eſtate be granted by Letters Patent, the Leſſee of Part muſt in Pleading ſhew the Letters Patent. *R.* 10 *Co.* 92. *a.* *Dub. Dy.* 29. *b.* *Semb. cont.* 2 *Cro.* 70.

So, if the Grantee of a Rent grant a Part of the Rent to another, the ſecond Grantee ought to ſhew the firſt Deed. 3 *H.* 6. 20, 21. 10 *Co.* 93. *a.*

(O. 6.) Or juſtifies under a Party or Privy.

If a Man juſtifies under one, who is Party or Privy to a Deed, in Pleading he muſt ſhew the Deed. 10 *Co.* 92. *a.* *Co. Lit.* 226. *a.*

As, if he juſtifies as Servant to the Leſſee of a Patentee. *R.* 10 *Co.* 92. *a.* 2 *Cro.* 317.

Or, to a Leſſee, who by a Covenant in his Leaſe has Power to take Trees for Fireboot. *R.* 2 *Cro.* 292.

Or, as Servant to a Leſſee of Tithes. *R.* 2 *Cro.* 360.

(O. 7.) Tho' Nothing is conveyed by the Deed, if a Deed was neceſſary.

And if a Deed is neceſſary, he who pleads it muſt ſhew it, tho' Nothing is conveyed or transferred by the Deed, but it relates to collateral Matter: As, if a Man pleads Attornment by a Corporation to a Grant to him in Reverſion, he muſt ſhew the Deed of Attornment, tho' he claims Nothing from thoſe, who attorned, which is only a Conſent. 6 *Co.* 38. *b.*

(O. 8.) When it is not neceſſary.

(O. 8.) If he be a Stranger.

But if a Man be a Stranger to the Deed and claims Nothing out of it, nor juſtifies as a Servant to One, who is Party or Privy, he need not ſhew the Deed, tho' he pleads it. 10 *Co.* 93, 94.

As, if he comes in not by the Party to the Deed, but by Act of Law, and therefore cannot provide for the Shewing of the Deed: As, if Guardian in *Chivalry* in Right of the Heir enters for a Condition broken, he need not ſhew a Deed of the Condition. *Co. Lit.* 225. *b.*

So Tenant by Statute Merchant, Staple, or *Elegit.* *Co. Lit.* 225. *b.* 5 *Co.* 75. *a.*

So Tenant in Dower. *Co. Lit.* 225. *b.*

If a Miniſter ſues for an Augmentation on the *St.* 29 *Car.* 2. reſerved by a Dean on a Demiſe by Indenture of Lands belonging to his Deanery, he need not ſhew the Indenture, for it is ſufficient to ſay *Penes ſe remanen'.* *R.* 3 *Lev.* 83.

A Bailiff, who juſtifies under a Juſtice of Peace, need not ſhew the Commiſſion. 20 *H.* 7. 7. *a.*

Nor a Man, who pleads a Patent to a Stranger. *R. Hard.* 187.

Nor *Ceſtuy que Uſe*, who pleads a Grant of an Advowſon by a Deed to *B.* to his Uſe; for the Deed belongs to *B.* *R.* 2 *Cro.* 217.

So, an Aſſignee of a Debt upon Bond by Commiſſioners of Bankrupt; for he comes to it by Act of Law, and therefore need not ſhew the Bond. *R. Cro. Car.* 209.

So, if there be a Covenant to ſtand ſeiſed to the Uſe of *B.* he, who claims under *B.* need not ſhew the Deed of Covenant in Pleading; for *B.* is in by Law, *viz.* by the *St.* 28 *H.* 8. 10. of Uſes. *Semb. Cro. Car.* 442.

So an Executor of a Feoffee need not produce the Deed, by which the Plaintiff enfeoffed *B.* to the Uſe of the Teſtator, in Debt on a Bond for Performance of a Covenant of the ſame Deed. *R. Lut.* 483.

[If Plaintiff claims not the Land but only a Rent-charge, *Profert* is not neceſſary; for the Charters belong to the Owner of the Land, and the Owner of the Rent-charge is not intitled to them. *Whitfield* v. *Fauſſet*, *H.* 1749. 1 *Vezey* 387.]

(O. 9.) Except where the Deed belongs to him,

Yet, if the Deed belongs to him, he muſt ſhew it, tho' he came to the Eſtate by Act of Law: As, the Lord by *Eſcheat* ſhall not plead a Condition to defeat a Freehold without ſhewing it. *Co. Lit.* 226. *a.*

So, Tenant by the Curteſy ſhall not plead a Condition made by his Wife, tho' he is in by Act of Law; for it is preſumed that he has the Deeds which belonged to his Wife. *Co. Lit.* 226. *a.*

So, if the Uncle of a Tenant in Tail enfeoffs another with Warranty, who afterwards releaſes the Warranty to the Feoffor, and the Uncle dies, if the Tenant in Tail pleads the Releaſe, he muſt ſhew it, for it belongs to him after the Death of his Uncle. *Co. Lit.* 393. *a.*

(O. 10.) If the Eſtate be executed.

So a Man, who pleads a Deed to which he is neither Party nor Privy, need not ſhew it, if the Eſtate be executed: As, if he pleads a Feoffment to *A.* upon a Condition and Entry for the Condition broken, and afterwards a Deſcent to the Defendant, he need not ſhew the Deed of Condition; for it is executed. *Co. Lit.* 226. *a.*

So, if he pleads a Mortgage and Payment at the Day, he need not ſhew the Deed, for the Condition being performed the Deed perhaps was delivered up. *Ibid.*

So, if a Mortgagee demiſes for Years, and the Mortgagor re-enters, in Debt for Rent againſt the Leſſee afterwards, he ſhall plead the Mortgage and Re-entry, without ſhewing the Deed. *Co. Lit.* 226. *a.*

So, if a Confirmation be to a Leſſee for Life, Remainder to *A.* in Waſte, *&c.* by *A.* after the Eſtate executed he need not ſhew the Deed. *Co. Lit.* 317. *b.*

So, if Defendant pleads an Aſſignment of a Leaſe, the Plaintiff replies, that the Leſſee could not aſſign without the Leſſor's Licence by Deed, and the Defendant rejoins that he had Licence by Deed, he need not ſhew it; for it is executed. *R.* 6 *Co.* 38. *b.* *R.* 2 *Cro.* 102.

(O. 11.) Except where he is Party or Privy.

But a Party or a Privy to a Deed muſt ſhew it, tho' the Eſtate be executed: As, the Leſſor himſelf cannot plead a Condition and Entry for the Condition broken, without ſhewing the Deed, tho' the Condition be executed. *Co. Lit.* 227. *b.* 228. *b.*

(O. 12.) If the Shewing be hindred by the other Party.

So, if the Plaintiff detains the Deed, the Defendant may plead without ſhewing it: As, Tenant in an Aſſize may plead a Feoffment on Condition and Entry, and that the Plaintiff entred and took the Cheſt where the Deed was, *&c.* and detains it without ſhewing the Deed. *Co. Lit.* 226. *a.*

So, in Waſte, the Defendant may plead a Releaſe, and that the Plaintiff got Poſſeſſion of it, and detains it, without ſhewing the Releaſe. 5 *Co.* 75. *a.*

So the Plaintiff may declare that by Indenture, which the Defendant *penes ſe retinet*, *A.* demiſed the Rectory to the Defendant, who thereby covenanted to find a Prieſt, and to pay him 20*l.* *per Ann.* and that the Plaintiff was found, and now brings Debt for the 20*l.* without a *profert in Cur':* for neither the Indenture nor Counterpart belong to him. *R.* 3 *Lev.* 83.

So,

So, if a Deed be ſhewn in Court and denied, for which Reaſon it remains in Cour, it may be pleaded in another Court without ſhewing it. 5 *Co.* 74. *b.* (O. 13.) Or be impoſſible.

So, if Letters Patent, which are in their Nature Matters of Record, are of Record in the ſame Court, they may be pleaded without ſhewing. 5 *Co.* 74 *b.* *Sal.* 497.

Otherwiſe, if in its Nature not Matter of Record; for a Deed inrolled in the ſame Court cannot be pleaded without ſhewing. 5 *Co.* 74. *b.*

So, there ought to be a *Profert* of Letters Patent inrolled in another Court, or of an Exemplification thereof. *Sal.* 497.

So, if there be a Deed, when it was not neceſſary, whereby no Eſtate or Intereſt is conveyed, a Man, who pleads it, need not ſhew it to the Court: As, if a Leaſe be on Condition that he will not aſſign without Licence, and the Leſſee pleads a Licence by Deed, he need not ſhew the Deed; for there is Nothing conveyed by it, and a Licence without Deed would have been ſufficient. *R.* 6 *Co.* 38. (O. 14.) If the Deed was not neceſſary or conveyed Nothing.

So, if the Condition be that he will not aſſign without Deed, and he pleads an Aſſignment by Deed, he need not ſhew the Deed; for a Deed was not neceſſery *ex Proviſione Legis*, but only *ex Proviſione Hominis*. 6 *Co.* 38. *b.*

So, in Debt for Rent upon a Leaſe by Indenture, the Plaintiff need not ſhew it; for the Leaſe is the Foundation of the Action, and it need not be by Indenture. *Per* 2 *J. Cro. El.* 711. 6 *Co.* 38. *b. in Marg.*

In *Quare Impedit*, if the Plaintiff makes Title by a Grant of the next Avoidance to *A.* who made Executors, who granted to him, he need not ſhew the Letters Teſtamentary, for the Grant to the Plaintiff was good, tho' the Will was not proved. *R. Dy.* 135. *a.*

So, if the Deed pleaded be only in the Inducement to the Action or Bar, it need not be ſhewn to the Court: As, in a Suit in the *Exchequer* by the King's Farmer, he need not ſhew the Deed, whereby he is Farmer; for it is collateral to the Action. 6 *Co.* 38. *b.* (O. 15.) Or be alledged in the Inducement to the Action or Bar.

So, in an Action on the *St.* 2 *Ed.* 6. 13. If the Plaintiff declares that the King granted Tythes by Letters Patent to *A.* for Life, who leaſed to the Plaintiff for Years, he need not ſhew to the Court the Letters Patents, which are only Conveyance to the Action. *R.* 2 *Cro.* 70.

So, in an Action for Diſturbance of a Way, if the Plaintiff declares that a Corporation, and all *Que Eſtate, &c.* in ſuch a Meſſuage, have a Way, he need not ſhew the Deed, whereby the Eſtate was conveyed to the Corporation; for it is only Inducement. *R.* 2 *Cro.* 673.

So, in Replevin, if the Avowant claims by a *Que Eſtate* a Hundred to which a Leet is incident, he need not ſhew the Deed, whereby the Hundred is claimed, for this is only Inducement to the Leet. 2 *Leo.* 74.

So, in Treſpaſs, if the Defendant juſtifies by Command of the Heir of *A.* who died ſeiſed, and the Land deſcended to his Heir and the Plaintiff ſays, that *A.* by Indenture covenanted to ſtand ſeiſed to the Uſe of *B. &c.* and by his Licence, *&c.* and traverſes the dying ſeiſed, he need not ſhew the Indenture, for it is only Inducement to the Traverſe. *R. Cro. Car.* 442. *Jon.* 377.

So, in Treſpaſs, if the Defendant juſtifies by *A.*'s dying ſeiſed, and a Deſcent to him, and the Plaintiff ſhews that before *A.* was ſeiſed, *B.* being ſeiſed made a Leaſe to *D.* who died, and Plaintiff's Wife took out Adminiſtration and traverſes *A.*'s dying ſeiſed, there is no Need of a *Profert* of the Letters of Adminiſtration to his Wife; for it was only Inducement to the Traverſe. *R. Hob.* 38.

So, if a Man pleads a Deed by Way of Diſcharge, and not in order to make a Title, he need not ſhew it to the Court: As, in Bar to an Avowry made by a Corporation for Rent and Services, if the Plaintiff pleads a Leaſe of the Manor made (O. 16.) If the Deed be not mentioned, to intitle him.

made to *A.* who demiſed to him, he need not ſhew the Deed, for it is pleaded by Way of Diſcharge, and he does not claim Title by it. *R. Mo.* 870.

So, in an Action againſt an Adminiſtrator, if the Defendant pleads, Original purchaſed before Adminiſtration granted to him, he need not ſhew the Letters of Adminiſtration, for he doth not intitle himſelf by them. *R. Lut.* 10.

In an Action by an Executor, if the Defendant pleads, Adminiſtration granted to another, he need not ſhew the Letters of Adminiſtration. *R. Pl. Com.* 277. *a.*

If there be a Grant to the Lord of a Manor that the Tenants of the Manor ſhall be diſcharged of Toll, and a Tenant pleads ſuch Diſcharge, he need not ſhew the Grant. 20 *H.* 7. 6. *b. Cont. per Brudnel.* 20 *H.* 7. 7. *a.*

So, in a Writ, founded on a Deed, the Deed need not be ſhewn.

So alſo in a *Scire facias* by an Adminiſtrator or Executor upon a Recognizance to his Teſtator, he need not ſhew the Letters Teſtamentary. *R. Cro. El.* 592.

(O 17.) When the not ſhewing is aided.

If a Man did not ſhew a Deed to the Court, when he ought, the Omiſſion was eſteemed Matter of Subſtance, and not helped upon a general Demurrer. *Dub.* 1 *Leo.* 310. *R.* 2 *Cro.* 292. *R.* 10 *Co.* 94. *D.* 1 *Rol.* 20. *D. Hob.* 233. *R.* 2 *Cro.* 32. *R. cont. Sal.* 497. *D. cont.* 1 *Leo.* 300. *Cro. El.* 153. *Acc. Mo.* 885.

But now it is aided on a General Demurrer. *R. Lut.* 1355. And by the *St.* 4 & 5 *Ann.* 16. It is enacted, that no Exception ſhall be taken for not alledging the Bringing into Court any Bond, Indenture, or other Deed, unleſs ſhewn for Cauſe of Demurrer.

So an Omiſſion of *Profert hic in Cur' Litteras Teſtamentar'* in an Action by an Executor, was Subſtance, and not aided on a General Demurrer. *R. Hob.* 83. *R.* 2 *Cro.* 409, 412. 3 *Bul.* 223. *R. Cro. El.* 551.

But now it ſhall be aided. *R.* 2 *Sand.* 402. *R.* 1 *Sid.* 249. *R. Lut.* 301. And it is ſo enacted by the *St.* 4 & 5 *An.* 16.

So the Omiſſion of Letters of Adminiſtration was held to be Subſtance. *Hob.* 233.

But now it ſhall be aided on General Demurrer. *R.* 1 *Vent.* 222. 1 *Sid.* 98. And it is ſo enacted by the *St.* 4 & 5 *An.* 16.

And by the *St.* 16 & 17 *Car.* 2. 8. After Verdict no Judgment ſhall be ſtaid or reverſed for Want of alledging the Bringing into Court of any Bond, Bill, Indenture, or other Deed, mentioned in the Declaration or other Pleading, or Letters Teſtamentary, or Letters of Adminiſtration.

So, if the Declaration alledged Matter of Record, and did not conclude *prout patet per Recordum*, it was Subſtance.

But now it ſhall be aided on a General Demurrer. *R.* 1 *Mod.* 9. *Vide St.* 4 & 5 *An.* 16. *Vide ante*, (E. 29.)

(P) Oyer.

(P. 1.) Of Deeds.

IF a Man *profert in Cur'* a Deed, it remains in Court, in Judgment of Law, the whole Term, in which it is ſhewn; for the whole Term is but one Day. *R.* 5 *Co.* 74. *Wymark. Co. Lit.* 231. *b. Lut.* 1644. *Sal.* 497.

And, if the Deed be denied, it remains in Court till the Plea is determined, and the *Cuſtos Brevium* has the Cuſtody of it. 5 *Co.* 74. *b. Co. Lit.* 231 *b. Mod. Ca.* 233.

But, if it be not denied, after the End of the Term in which it was ſhewn the Law adjudges it to be in the Cuſtody of the Party himſelf; for there is no Officer in Court to whom the Charge of it belongs. 5 *Co.* 74. *b. Co. Lit.* 231. *b. Sal.* 497.

So, Letters Teſtamentary or of Adminiſtration do not remain in Court *omnino*; for they may be neceſſary elſewhere. *Sal.* 497.

If a Deed is brought into Court by one Party, the other may demand *Oyer* of it at any Time whilſt it remains in Court, and take Advantage of any Proviſo or Clauſe in ſuch Deed. *R.* 5 *Co.* 74. . *b.*

[*Oyer* muſt be demanded before Rule to plead is out. *Barnes* 241, 329, 268, 326.]

So, if a Deed be brought into Court by one Tenant or Defendant, the others may plead in Bar any Matter in ſuch Deed, without having it in Hand. 5 *Co.* 74. *b.*

And therefore, tho' a Deed be not denied, *Oyer* of it may be demanded in the ſame Term in *C. B.* as well as in *B. R.* *Lut.* 1644.

And by the Courſe of *B. R.* *Oyer* may be at any Time before Plea, tho' it cannot be in *C. B.* after Term, or after an Imparlance. *Terms de Ley.* But it is ſaid that it ſhall not be after Imparlance to another Term. 2 *Lev.* 142. *Vide Bro. Oyer* 16, 17, 33, 39.

So, by the Courſe of *B. R.* no Imparlance or Continuance is entred before Replication, Rejoinder, *&c.* tho' Day be allowed for two or three Terms, to reply, *&c.* and then the Replication, Rejoinder, *&c.* being entred generally, may take Advantage of the Deed mentioned in the Bar, *&c.* for the Whole ſhall be underſtood to be in the ſame Term. *R.* 5 *Co.* 75. *a.* *Wymark. Semb. Lane* 39.

If the Defendant demands *Oyer* of an Obligation, he ſhall not have *Oyer* of the Condition, unleſs he demands that alſo. *Mod. Ca.* 237.

But if he demands *Oyer* of an Indenture, which refers to Matter indorſed, it is not a compleat *Oyer*, if he has not *Oyer* of the Indorſement alſo. *R. Mod. Ca.* 237.

[*Oyer* ſhall contain the Names of the Witneſſes, and all Memorandums on the Bond. *Barnes* 263.]

[If there are two Counts for the ſame Debt on one Policy of Inſurance, Defendant cannot have *Oyer* of two Policies. *Boiſſier* v. *London-Aſſurance Company.* *P.* 9 *G.* 2. *B. R. H.* 243.]

If *Oyer* be demanded of a Deed ſhewn in a Plea, it becomes Part of the Plea. 1 *Sand.* 317.

So, if there be *Oyer* of a Deed ſhewn in a Declaration, it will be Part of the Declaration.

So, if the Party has not the Deed, which he ſhews in his Declaration, *&c.* and *Oyer* of it is demanded, the Court on an Affidavit will oblige the other Party to produce his Counterpart, or will grant an Imparlance. 2 *Cro.* 429. 1 *Sid.* 50.

So, if an Action be founded on a Writing, as a Policy of Aſſurance, where a *Profert* is not neceſſary, the Court may grant an Imparlance, till a Sight given of the Writing, if the Defendant cannot have it otherwiſe. *Semb.* 1 *Sid.* 386.

[*Oyer* of a Deed, in Covenant, cannot be diſpenſed with, tho' ſhewn to be loſt, and Defendant have the other Part in his Hands, *Soreſby* v. *Sparrow*, *P.* 16 *G.* 2. *Str.* 1186. *Wilſ.* 16.]

But where a Note is only Evidence of the Action, the Court will not direct a Sight of it. *R.* 1 *Sal.* 215.

But a Man cannot demand *Oyer* of a Deed, which is not in Court, and therefore in Debt upon a Bond with a *Profert in Cur'* if the Defendant demands *Oyer* of the Bond and Condition, which appears to be for the Performance of the Covenants in an Indenture, he cannot demand *Oyer* of the Indenture; for it was not brought into Court. *R.* 1 *Sand.* 9, 122. *Sal.* 498.

So, in Debt on a Recogniſance, the Defendant cannot demand *Oyer* of it, if it was not acknowledged in the ſame Court; for a Reconiſance in *Chancery* or other Court is not brought into Court as a Bond is. *R. Poph.* 202.

So in a *Scire facias*, on a Recovery of an Annuity by Deed, the Defendant cannot demand *Oyer*; for the Action is founded on the Recovery, not on the Deed. *Bro. Oyer* 1. 32.

So, if the Defendant juſtifies by a Precept of a Juſtice of Peace, the Plaintiff cannot demand *Oyer* of the Precept. *Bro. Oyer* 13.

So, if the Defendant demands *Oyer* of a Will, *&c.* whereof the Plaintiff makes a *Profert*, *&c.* when he need not, it ſhall not be allowed. *Sal.* 497.

So, if the Defendant demands *Oyer* of a Deed when it is not demandable, and the Plaintiff gives *Oyer*, he ſhall not be concluded thereby, but may afterwards make his *Oyer* compleat. *R. Sal.* 498.

If the Defendant demands *Oyer*, when it ought not to be granted, it is bad. *Sal.* 498.

But the Plaintiff cannot in his Demurrer ſay *quod Placit prædict' eſt minus ſufficiens*. *R.* 2 *Lev.* 142.

And if a Man demands *Oyer* of a Deed, not in Court, it is bad on a ſpecial Demurrer. *R.* 1 *Sand.* 9.

But it ſhall be aided on a General Demurrer. *R.* 1 *Sand.* 9.

So, if the Defendant demands *Oyer* of an Indenture, not mentioned in the Declaration, and the Plaintiff gives it, the Defendant may plead thereon. *Mod. Ca.* 237.

If a Man craves *Oyer* of a Deed ſhewn in a Declaration, which is granted, the other cannot ſay that the Deed read is not the ſame on which he declared; for the Reading is the Act of the Party himſelf, by which he is concluded. *R. Lut.* 1644.

Otherwiſe, if *Oyer* is demanded of a Writ, *&c.* he may ſay that it is not the ſame; for the Reading is the Act of the Court. *Per* 3 *J. Tracy cont. Lut.* 1644.

So, if the Defendant demands *Oyer* of a Deed, which is granted, and in his Plea recites the Deed different from the true Deed, the Plaintiff by his Replication may pray that the Deed may be inrolled, and ſo procure it to be truly inrolled.

[Defendant after *Oyer* may plead the General Iſſue, without taking Notice of the *Oyer*, and Plaintiff cannot, when he makes up the Iſſue, inſert the *Oyer* at the Head of the Pleas; if he would avail himſelf of it, he muſt pray it to be inrolled at the Head of his Replication at his own Expence. *Weavers Company* v. *Forreſt*, *M.* 19 *G.* 2. *Str.* 1241.]

[In *C. B.* if *Oyer* prayed and not pleaded, Plaintiff may inſert it in the Plea; it is only where it is not prayed that he is obliged to have it inrolled on his Replication. *Barnes* 327.]

So, if the *Oyer* be imperfect, but not varying from the Deed, and the Defendant demurs, he ſhall not take Advantage of it; for he might inſiſt upon a compleat *Oyer*. *R. Sal.* 602.

[If a Bond is in the Hands of a third Perſon, the Court will compel him to give *Oyer* of it, and produce it at the Trial; tho' he is a Barriſter, and alledges it was left in his Hands to await the Event of a Suit depending; for Defendant may avail himſelf of that by Plea. *White* v. *Earl Montgomery*, *M.* 17 *G.* 2. *Str.* 1198.]

[If Defendant pleads with a *Profert*, and *Oyer* is demanded, Plaintiff may ſign Judgment if it is not given in two Days. *Barnes* 245.

(P. 2.) Of Writ and Record.

So a Man may demand *Oyer* of a Writ or other Record alledged in Pleading: And therefore the Defendant may demand *Oyer* of the Original.

So may the *Garniſhee*. *Bro. Oyer* 11.

But ſhall not have *Oyer* of *Meſne* Proceſs: As, of Reſummons on Default, *&c.* *Bro. Oyer* 3. 18.

So, in Error, the Defendant ſhall not have *Oyer* of the Original, but of the Record he may have. *Bro. Oyer* 19.

Nor in Attaint. *Bro. Oyer* 19.

So

So, in a *Scire facias* againſt an Executor on a Recovery, the Defendant may demand *Oyer* of the Record. *Bro. Oyer* 12, 26, 38.

So, in Debt on a Judgment. *Semb. Bro. Oyer* 14, 26.

[Plaintiff may have a Rule to reject Plea of a Recovery in the ſame Court, unleſs *Oyer*. *Hunter* v. *Wiſeman*. *H.* 2 *G.* 2. *Gwinnel v. Thompſon*, *T.* 3 *G.* 2. *Str.* 823.]

But in Debt on a Recovery in an Inferior Court of Record, the Defendant ſhall not have *Oyer* of the Record; for it remains in the Inferior Court. *Bro. Oyer* 8,

Nor of a Record in another Court. *Bro. Oyer* 26.

Or after Removal to another Court by a *Recordare*, Error, *&c.* *Bro Oyer* 4, 31.

So he ſhall not have *Oyer* of a Record, when it is only Conveyance to the Action, as in Eſcape. *Bro. Oyer* 29.

So he ſhall not have *Oyer* of a Record, when he is a Party to it. *Bro. Oyer* 19, 31, 36.

[If Defendant pleads Tender before Original, and Plaintiff replies Original purchaſed before Time of Tender pleaded, the Court will not make Rule for *Oyer* of Original, which is a Record. *Barnes* 340.]

So, in *Scire facias* on an Office found for the King, the Defendant ſhall not have *Oyer* of the Office; for it is recited in the Writ. *Bro. Oyer* 22.

The Defendant ſhall not plead in Abatement of the Writ before *Oyer* of it.

Nor Variance between the Writ and *Count*. *R. Sal.* 658.

[If Defendant pleads Variance between Writ and Count, without *Oyer*, he ſhall anſwer over. *Vanderplank* v. *Banks*, *H.* 32 *G.* 2. 2 *Wilſ.* 85.]

[After *Oyer*, Defendant may plead *Nul tiel Record*, without inſerting the *Oyer*; and Plaintiff, if he pleaſes, may inſert it in his Replication. *Simmonds* v. *Parmenter*. *T.* 18 *G.* 2. *Wi.ſ.* 97,]

So the Defendant ſhall not plead *Condition performed*, before *Oyer* of the Bond. *Bro. Oyer* 16, 25.

But the Defendant ſhall not have *Oyer* after Imparlance. *Bro. Oyer* 14. *Per Holt. Mod. Ca.* 28.

Nor after Plea in Abatement. *R. Mod. Ca.* 28. *Sal.* 498.

Demand of *Oyer* was antiently made in Court; but now it is made by one Attorny of the other. *Mod. Ca.* 28.

And when *Oyer* ought to be granted, the Defendant need not plead before *Oyer*. *Mod. Ca.* 28.

But the Defendant cannot take a Copy of a Writ from the Record, to make *Oyer* of it, without the Plaintiff's Conſent; for it ought to be demanded of and granted by the other Party. *Mod. Ca.* 28.

So, in Covenant on an Indenture, the Defendant cannot, without demanding *Oyer*, ſet out the Indenture and plead, *Covenants performed*. *R. Mod. Ca.* 154.

If *Oyer* is granted, when it need not, it is no Error. *Mod. Ca.* 28. *Sal.* 498.

Otherwiſe, if it be denied, when it ought to be granted. *Mod. Ca.* 28. *Sal.* 498.

(Q) Demurrer.

(Q 1.) What it is.

DEMURRER is, when for the Inſufficiency of the Count, Plea, *&c.* in Point of Law, the other Party demurs, and refers itto the Judgment of the Court. *Lit.* 71. *b.* 5 *Mod.* 132.

(Q. 2.)

(Q. 2.) How it ſhall be delivered, &c.

And in *C. B.* a Demurrer to a Plea, &c. need not be received, unleſs it is under a Serjeant's Hand. 3 *Leo.* 222. *Comp. Att.* 41.

But this does not extend to a Demurrer on a Challenge to an Array. 3 *Leo.* 222.

[If the Joinder in Demurrer is ſigned by Counſel, at the Time of accepting the Paper-Book, it is ſufficient, tho' it was not ſigned when delivered. *Barnes* 156.]

A Demurrer to an Indictment ſhall not be received after Verdict. *R.* 1 *Sid.* 208.

If a Defect in Pleading will not be aided by Verdict, it is ſafer to join Iſſue on the Fact than to demur; for the Fault in Law will be conſidered afterwards. 4 *Co.* 14. *a.*

If there be a Demurrer to Part, and Iſſue to Part, the Demurrer ſhall regularly be determined firſt. *Co. Lit.* 72. *a.*

Yet it is in the Diſcretion of the Court to try the Iſſue before the Demurrer is determined. *Co. Lit.* 72. *a. Semb. Dal.* 2.

If there be Judgment for the Plaintiff on a Demurrer, he may, if he pleaſes, enter a *Non pros* on the Iſſue, and have a Writ of Inquiry on the Demurrer, but not without a *Non Pros* to the Iſſue. *R.* 1 *Sal.* 219.

[On Judgment for Plaintiff, on Demurrer to one Count, he may execute Writ of Inquiry, without a *Non Pros* to the Iſſues, which he may ſupply when he enters final Judgment. *Fleming* v. *Langton, M.* 9 *G. Str.* 532.]

[If there is Judgment on Demurrer as to one Count, Plaintiff may enter *Nolle Proſequi* as to the Reſt, and need not be amerced. *Davis* v. *Hoyle, M.* 10 *G. Str.* 574.]

If one Party demurs, the other muſt join in Demurrer. *Semb. Co. Lit.* 72. *a.*

Or amend, or diſcontinue his Action on Payment of Coſts. *Per Rule* 1654. *Mills* 29.

And if Demurrer be joined, it cannot be waived afterwards without Conſent. *R. Cro. Car.* 513.

Yet the King, if he pleaſes, may waive a Demurrer. As in an Information by *Qui tam. Cro. Car.* 347.

When Demurrer is joined, the Court ſhall adjudge upon the whole Record, and not only on the Point referred to the Court by the Demurrer. *R. Hob.* 56.

And if the Defendant makes Default at the Day given after Demurrer joined, there ſhall be final Judgment againſt him. *Mod. Ca.* 5.

But, on a Demurrer to a Plea in Abatement, the Defendant cannot inſiſt upon a Defect in the Declaration. *Lut.* 1592, 1667.

Yet this does not extend to a Plea in Abatement, which may alſo be pleaded in Bar. *Semb. Lut.* 1604.

[It muſt be entered on the Roll the Term it is joined of. *Barnes* 328.]

[After Joinder, Plaintiff tenders Paper-Book to Defendant, if he refuſes to accept and pay, Judgment; if he accepts, Plaintiff moves for *Conſilium. Barnes* 163, 165.

[Defendant may demur after Iſſue tendered, and it may (on Leave) be ſet down after Paper-Day. *Barnes* 296.]

[After Iſſue joined Demurrer cannot be received; therefore, tho' one Record is averred by Plaintiff, and another is denied by Defendants, and ſo no *proper* Iſſue joined, yet after Iſſue Demurrer ſhall be ſet aſide; and Advantage muſt be taken of the Impropriety in Arreſt of Judgment. *Barnes* 84.]

[Defendant may demur, if the Replication does not offer a fair Iſſue, and affords reaſonable Cauſe of Demurrer, tho' he has had Time to plead, on conſenting to plead iſſuable Plea, to rejoin *gratis*, and take ſhort Notice of Trial. *Dewey* v. *Sopp, P.* 16 *G.* 2. *Str.* 1185.

[Court will give Leave to withdraw Demurrrer, after it is ſet down to be argued and Trial loſt, on Coſts. *Barnes* 155.]

[Tho' the Court will ſometimes give Leave to withdraw a Demurrer and plead, after Demurrer argued, yet not after Trial of other Iſſues. *Robinſon* v. *Raley*, *P.* 30 *G.* 2. 1 *B. M.* 316.]

(Q. 3.) The Form of a Demurrer.

[If Defendant demurs after Iſſue joined upon *de Injuria ſua propria abſque tali Cauſa*, it is a Diſcontinuance, and ill. *Aſlett* v. *Vincent*, *P.* 13 *G. Ld. Raym.* 1482.]

A Demurrer ought to be to the whole Plea, otherwiſe it is a Diſcontinuance for the Whole. *Per Chamb.* 2 *Rol.* 390. *Vide Plea and Replication*, *Ante*, (E. 1. F. 4.)

And therefore if the Defendant pleads three Pleas, and the Plaintiff in his Demurrer ſays *Quod Placitum Prædictum eſt minus ſufficiens*, it is a Diſcontinuance. *R. Yel.* 65.

So, in Treſpaſs for taking and carrying away Goods, if the Defendant *quoad* the Taking demurs, and ſays Nothing to the Carrying away, it is a Diſcontinuance. *R. Yel.* 5.

So in Treſpaſs for taking and carrying away Goods, if the Defendant juſtifies, and the Plaintiff *quoad Placitum* to the Taking the Goods, and the Matter therein demurs, and the Defendant joins in this Form, *ex quo* the Plaintiff acknowledges the Taking *petit Judicium*, without Mention of the Carrying away, it will be a Diſcontinuance. *R.* 1 *Brownl.* 192. *Yel.* 5.

So, if a Demurrer is to a Replication to a Plea in Abatement, and prays that the Writ may abate, and the Plaintiff joins in Demurrer praying his Damages, like as where the Demurrer is to a Plea in Bar, it will be a Diſcontinuance. *R. Sho.* 155.

[After Plea in Abatement and Replication, if Defendant demurs and Plaintiff joins, he muſt pray *reſpondeas ouſter*, and not Judgment and Damages, but if he does, he may amend on Payment of Coſts. *Anon. P.* 24 *G.* 2. 1 *Wilſ.* 302.]

So, if the Defendant pleads to Part, and ſays Nothing to the Reſidue, and the Plaintiff demurs, it is a Diſcontinuance, for the Demurrer ſhall not be intended to be for the not Pleading to Part; for the Plaintiff ought to have prayed Judgment on a *Nil dicit*. *R.* 1 *Rol.* 488. *l.* 5.

But, if the Defendant demurs to a *Scire facias* or Declaration, and concludes his Demurrer in Abatement, the Plaintiff may join in Bar and ſhall have Judgment; for the Matter being ſufficient, and confeſſed by the Demurrer, the Defendant ſhall not avoid Judgment by his Concluſion. *R.* 3 *Lev.* 223.

If a Count or Declaration does not contain a good Cauſe of Action, there may be a Demurrer to it.

If the Declaration is founded on a Bond or other Specialty, the Defendant may demand *Oyr* of the Specialty, and if it ſhews no Cauſe of Action, he may demur; for the Deed on *Oyer* is Part of the Count. *Vide Ante*, (P. 1.)

[If Declaration on Recognizance of Bail does not ſet out Condition, Defendant cannot demur; it may be abſolute; if Conditional, he ſhould plead *nul tiel Record*. *Barnes* 339.]

But if the Defendant demands *Oyer* of a Bond, which appears to be made by many jointly, and thereupon he demurs, it is bad; for perhaps the Others did not ſeal or execute the Bond. *R. Jon.* 303.

So, if there are ſeveral Counts in the ſame Declaration, ſome good and ſome bad, and the Defendant demurs generally to the whole Declaration, the Plaintiff ſhall have Judgment for ſo much as is good. 1 *Sand.* 286. *Vide Ante*, (C. 32.)

[If on Action for *crim con.* Defendant pleads Not guilty, and Not guilty within ſix Years, and Iſſue to the firſt, Demurrer to the ſecond, Verdict for Plaintiff on Iſſue, and Plea held good on the Demurrer; there ſhall be Judgment on the De-

murrer for Defendant, and Plaintiff have no Damages. *Coke* v. *Sayer*, *H.* 32 *G.* 2. 2 *Wilſ.* 85.]

So in an Action on the *St.* 13 *Ed.* 1. againſt an Hundred for a Robbery of Money and Goods, if it is bad for the Goods, on a Demurrer to the Whole the Plaintiff ſhall have Judgment for the Money; for they are in their Nature ſeveral. *R.* 2 *Sand.* 380.

So in Covenant, where one Breach is bad, the other good. 2 *Sand.* 380. *Vide Poſt*, (2 V. 3)

So in Trover, *&c.* where one Article is inſenſible or uncertain. *R.* 1 *Sal.* 218.

The uſual Form of a Demurrer is, that the Party alledges *Quod Narratio, &c. eſt minus ſufficiens*, and prays Judgment of the Count, or *Quod placitum eſt minus ſufficiens, &c. Pl. Com.* 400. *b.*

But it is ſufficient if it has the Subſtance of a Demurrer, tho' it is not formal: As, if *petit Judicium de Narratione*, and prays *quod caſſet*. *R.* 5 *Mod.* 132.

Tho' it does not conclude with an Averment *Et hoc, &c. R.* 1 *Leo.* 24. *Vide Ante*, (E. 33)

So a Demurrer not formally joined is ſufficient to bring the Matter before the Court. *R.* 3 *Lev.* 222.

So, now the Words, *Materiaque in eodem contenta* are added to the old Form of a Demurrer. *Pl. Com.* 400. *b.*

So a Demurrer may be to an *Aid Prier* and *Receit*. *Co. Lit.* 72. *a.*

To a Voucher. *Co. Lit.* 72. *a.*

To a Wager of Law. *Co. Lit.* 72. *a.*

(Q. 4.) General Demurrer.

A Demurrer is General or Special. *Co. Lit.* 72. *a.*

A Man who demurs generally ſhall take Advantage of all Matters. *Pl. Com.* 66. *a.*

Of all Matters which are requiſite to ſhew a Right or good Title in the Plaintiff. *Hob.* 301.

And therefore if the Declaration don't ſhew a ſufficient Right or Title in the Plaintiff, it will be bad on a general Demurrer; for a Right which does not plainly appear is as none. *R. Hob.* 301.

[If Plaintiff brings Action for ſecluding him from the Veſtry-Room, and does not ſhew that the Pariſh had a Right to meet there, it is a Fault in Subſtance, and need not be ſhewn for Cauſe of Demurrer. *Phillybrown* v. *Ryland*, *P.* 11 *G. Str.* 624.]

If a Demurrer begins in Bar and concludes in Abatement, there ſhall be final Judgment. *R.* 1 *Lev.* 312. *Vide Abatement*, (I. 15.)

[Plaintiff cannot take Advantage of Duplicity in Defendant's Rejoinder, without having ſhewn it for Cauſe of Demurrer. *Browning* v. *Dann*, *M.* 9 *G.* 2. *B. R. H.* 167.]

[If Defendant demurs to Debt on Bond, in Conſideration of Cohabitation *had* with Plaintiff, it is bad, for the Bond is not illegal. *Turner* v. *Vaughan*, *P.* 7. *G.* 3. 2 *Wilſ.* 339.]

[If there is a Demurrer to a Plea in which the Point has not been ſettled, but which the Court determines to be good, they will permit Plaintiff to move to withdraw Demurrer, and to reply. *Collins* v. *Collins*, *T.* 32 & 33 *G.* 2. 2 *B. M.* 820.]

[After Demurrer argued and determined for Defendant, Plaintiff may have Leave to withdraw his Demurrer, and reply, on paying Coſts. *Anon. T.* 3 *G.* 3. 2 *Wilſ.* 173.]

(Q. 5.) Confeſſes all the Facts, well pleaded.

A General Demurrer confeſſes all Matters of Fact, well pleaded. *Pl. Com.* 13. *b.* 85. *a. Co. Lit.* 72. *a.*

And therefore, if a Man pleads a Demand of Rent, and that he was there before Sun-ſet, and continued there till the Sun-ſet, and no one was there on the

other Part, to which there is a Demurrer, the whole Fact alledged is confeſſed, and Nothing remains, but whether it be a good Demand. *Pl. Com.* 172.

So, in Aſſize, if the Defendant does not traverſe Seiſin and Diſſeiſin, but pleads a Recovery in Bar, the Plaintiff confeſſes and avoids the Recovery by his Replication, to which the Defendant demurs; this is a Confeſſion of the Seiſin and Diſſeiſin. *R.* 2 *Rol.* 22.

So, in *Aſſumpſit* upon Conſideration that he had granted 1000 Trees to be cut down in three Years, and that he had cut down 800, and then the Defendant promiſed to permit him to cut the Reſidue after three Years, if he would not cut them down at preſent; the Defendant pleads that he had cut down 1000 before the Promiſe, a Demurrer to the Plea confeſſes that he had. *R. Yel.* 195.

So, in Covenant, if the Defendant pleads *Covenants performed*, and the Plaintiff aſſigns a Breach, and then the Defendant demurs, he confeſſes the Breach and contradicts his own Plea. *R. Cro. El.* 829.

In Debt upon Bond to pay, if *A.* died without Iſſue then living, the Defendant ſays that *A.* died having Iſſue living *apud B.* and the Plaintiff demurs for Want of a good *Venue*, he admits that *A.* had Iſſue living. *R. Dy.* 15. *a.*

[If Defendant demurs to an Information *quo Warranto*, for exerciſing an Office of publick Truſt, he cannot except that it is not ſuch an Office, for he has confeſſed it. *Rex* v. *Neal*, *P.* 8 *G.* 2. *B. R. H.* 106.]

In Debt on Bond to pay, *&c.* within 20 Days after the Return of a Ship, or at the End of 18 Months; the Defendant pleads that the Ship returned within 18 Months, and that he paid within 20 Days after; the Plaintiff replies, and traverſes the Payment, to which the Defendant demurs, the Demurrer admits the Breach, and therefore the Plaintiff ſhall recover. *R.* 2 *Mod. Ca.* 349.

[If Defendant demurs generally to the whole Declaration, and one Count is good, and may be joined, there muſt be Judgment for Plaintiff. *Duke of Bedford* v. *Alcock*, *T.* 22 & 23 *G.* 2. 1 *Wilſ.* 248.]

(Q. 6.) But a Demurrer is not a Confeſſion, if the Plea, *&c.* be bad.

But if a Count, Plea, or Replication, be vicious, a Demurrer thereto is no Confeſſion of the Matter alledged. *R.* 2 *Rol.* 22. 1 *Leo.* 80.

And therefore, if a Plea in *Quare Impedit* ſhews a Title in the King, and the Plaintiff demurs, if the Plea be bad, the Demurrer is not a Confeſſion of the King's Title. *R.* 2 *Rol.* 22. *R. Hob.* 164.

If a Replevin ſuppoſes a Taking in a Place in *A.* and the Avowry be for Rent in *B.* and the Plaintiff ſays that *B.* is within *A.* a Demurrer thereon is not a Confeſſion of Matter, which is repugnant and impoſſible and the Ground of the Demurrer. *R.* 1 *Sid.* 10.

So a Thing not material or traverſable, is not confeſſed or admitted by the Demurrer, when it is not traverſed. *R. Sal.* 561.

So there cannot be a Demurrer after Iſſue joined. *Semb. Sho.* 213.

(Q. 7.) What Matters are aided by a General Demurrer.

By the *St.* 27 *El.* 5. After Demurrer in any Action in any Court of Record, the Judges ſhall give Judgment as the very Right of the Cauſe and Matter in Law appear, without Regard to any Imperfection, Defect, or Want of Form in any Writ, Return, Plaint, Declaration, or other Pleading, or in any Proceſs, except what the Party demurring ſpecially and particularly ſets down.

And the Court, after Demurrer, may amend all ſuch Imperfections, Defect and Want of Form.

Provided it extend not to Appeals, Indictments, or Preſentments, or Actions on popular or penal Statutes.

And therefore now a Demurrer confeſſes all Matters informally pleaded, if they are not ſpecially ſhewn. *Hob.* 233. *Cont.* 3 *Mod.* 235.

And every Thing ſhall be ſaid to be Form, without which the Right of Action appears to the Court. *Hob.* 233.

And therefore all Defects of the Clerk, and Miſpriſions, which the Court may amend, without varying the Matter, are aided by General Demurrer. *Sav.* 87.

But

But Matter of Fact not alledged, and which the Judge cannot know by the Record, cannot be amended, nor ſhall the Omiſſion be aided by a General Demurrer. *Sav.* 88.

And this Statute ought to be ſtrained to remedy Defects in Form. *Hob.* 133.

And now by the *St.* 4 & 5 *Ann.* 16. After Demurrer in any Court of Record, the Judges ſhall give Judgment, &c. without Regard to any Imperfection, &c. in any Writ, &c. or other Pleading, Proceſs, or Courſe of Proceeding, except thoſe the Party demurring particularly ſets down as Cauſes of the ſame, altho' ſuch Imperfection, &c. might before be taken as Matter of Subſtance, and not aided by the *St.* 27 *El.* 5. ſo as ſufficient Matter appear in the Pleadings, on which the Court may give Judgment according to the very Right of the Cauſe.

[If Debt in the *Debet & detinet* is brought by an Adminiſtrator againſt the Heir of the Obligor, where he bound himſelf and his Heirs, it is good on a general Demurrer, ſince *St.* 4 *Ann. c.* 16. *Burland* v. *Tyler*, *P.* 11 *G.* 2 *Ld. Raym.* 1391.]

[If to Debt on Bond to indemnify Plaintiff for Beer he ſhould deliver to *A.* Defendant pleads none delivered ſince making the Bond, and Plaintiff reply, ſo much delivered; it is good on general Demurrer, tho' it does not ſay before filing the Bill. *Thrale* v. *Vaughan*, *H.* 16 *G.* 2. *Wilſ.* 5.]

But Matter of Form, which is ſhewn ſpecially for Cauſe of Demurrer, cannot be amended. *R. Yel.* 38.

So on a Demurrer, Matter of Form, not ſpecially ſhewn, ſhall be aided on the Part of him who joins, and alſo of him who demurs, in all Parts of the Pleadings. *Per Rule* 1654. *Mills* 29.

(Q. 8.) Special Demurrer.

(Q. 8.) Founded on Special Matter.

But a Man may alledge ſpecial Matter, and conclude with a Demurrer: As, in Treſpaſs by *A.* for taking a Horſe, if the Defendant pleads that one *A.* diſpoſſeſſed him of the Horſe, and gave it to the Plaintiff, the Plaintiff may ſay that *A.* in the Bar, and *A.* in the Count, are the ſame Perſon, and then demur; for without ſpecial Matter alledged the Demurrer would not have been good. *Co. Lit.* 72. *a.*

If a Man demurs ſpecially, he waves all other Matters, and relies upon one particular Point. *Pl. Com.* 66. *a.*

(Q. 9.) Which ſhews a Special Cauſe.

So ſince the *St.* 27 *El.* 5. If a Man demurs for Form, he muſt ſhew ſpecially the Cauſes of Demurrer.

And in *B. R.* he may ſhew them at any Time in the ſame Term, or one Day after the Term, if the Demurrer be not entred upon the Roll. 2 *Rol.* 330.

And it is not ſufficient that the Demurrer be *Quia caret Formâ*, but it muſt ſhew ſpecially in what Point the Form is defective. *Hob.* 232. *D. Lut.* 4.

And therefore a Demurrer for Duplicity, *quia duplex et caret Formâ*, is not ſufficient, but it muſt ſhew in what the Duplicity conſiſts. *R. in B. R. inter Lamplugh and Shortridge. P.* 13 *W.* 3. 1 *Sal.* 219.

And by *Rule in C. B. M.* 1654. The Cauſes aſſigned on Demurrers ought not to be involved in general Expreſſions of *double*, *Negative pregnant*, *uncertain*, *Want of Form*, &c. but ſpecially ſhewn, that the other Side may join in Demurrer, amend paying Coſts, or diſcontinue. *Mills* 29.

[If Plaintiff ſets out a Record *remaining* in *C. B.* and that the ſame was removed to *B. R.* it is informal and bad on ſpecial Demurrer. *Wilder* v. *Buckland*, *M.* 11 *G. Str.* 611.]

[If to Debt on a Bond to indemnify, Defendant pleads *quod indempnum conſervavit*, Plaintiff may demur to it, for not ſhewing how; but it muſt be ſhewn for Cauſe, for the *how* is only Form. *White* v. *Cleaver*, *H.* 12 *G. Str.* 681. 2 *Ld. Raym.* 1416.]

[An

[An immaterial Traverſe is good Cauſe for a Special, but not for a general Demurrer. *Courtney* v. *Satchwell*, *P.* 12 *G.* *Str.* 694.]

[Demurrer to Replication for Duplicity, in alledging Diſtreſs to be in the Night, and Poſſeſſion continued by Payment of Rent, is good. *Browning* v. *Dann*, *M.* 9 *G.* 2. *B. R. H.* 167.]

[Defendant cannot demur to Declaration, becauſe it ſays he was *ſummoned*, inſtead of *attached*, without praying *Oyer*. *Buſby* v. *Elliſton*, *H.* 9 *G.* 2. *B. R. H.* 189.]

[Defendant cannot demur for a ſmall Variance between the Writ and the Declaration, tho' it may be pleadable in Abatement. *Godfrey* v. *Duberry*, *M.* 11 *G.* 2. *Andr.* 75.]

[Where a Defect is pointed out by Demurrer, the Court will not conſider it as Surpluſage. *Barlow* v. *Evans*, *T.* 18 *G.* 2. *Wilſ.* 98.]

After Demurrer joined, on Motion the Cauſe ſhall be put in the Paper to be argued by Counſel.

The Motion ought to be on *Oyer* of the Record in Court.

And if the Roll, whereon the Pleadings are entred, be of a former Term, it muſt be filed; if in the ſame Term, it may be read in Court without being filed with the other Rolls. *Sal.* 565.

If a Demurrer or ſpecial Verdict be entred in Court to be argued, the Plaintiff's Attorney ſhall deliver two Copies of the Record to the Chief Juſtice and Senior Judge, and the Defendant's Attorney to the two Puiſne Judges. *Per Rule*, *P.* 27 *Car.* 2. *Mills* 61.

And no Argument ſhall he heard at the Bar before all the Judges have Copies. *P.* 27 *Car.* 2. *Mills* 61.

If the Attorney of either Party does not deliver, the other may deliver Copies to all the Judges three Days before the Argument, and thereon the Counſel of his Side ſhall be heard, and he ſhall be paid for them upon Demand, or allowed for them in Coſts. *Ibid.*

(Q. 10.) Demurrer upon Evidence.

If the Plaintiff or Defendant ſhews in Evidence any Record or other Writing, whereon a Doubt in Law ariſes, the other Party may demur on the Evidence. *Co. Lit.* 72. *a.* *R.* 5 *Co.* 104. *a.*

So, if he ſhews Evidence by Witneſſes, whereon a Doubt ariſes, the other Party may demur to it. *R.* 5 *Co.* 104. *a.* *Baker.*

So in an Information the King may demur to Evidence given for the Defendant. *Pl. Com.* 4.

But if the Doubt be, whether a Matter of Fact is well proved, the Defendant cannot demur to the Evidence; for the Jury may find on their own Knowledge: As, if for Proof of an Arreſt the Writ is not produced, the Defendant cannot demur. *R.* 1 *Lev.* 87.

If there be a Demurrer to Evidence, the Jury ſhall be immediately diſcharged, and need not inquire of the Damages; for that may be ſupplied by a Writ of Inquiry. *R. Cro. Car.* 143.

Yet the ſame Jury may inquire of the Damages conditionally. *Semb. Cro. Car.* 143. *Pl. Com.* 408. *per Mont. Ch. B.* 1682.

So, if at *Niſi prius* the Defendant pleads a Plea *after the laſt Continuance*, the Plaintiff may demur to it. *Hard.* 112.—When and how he ſhall plead it. *Vide Abatement*, (I. 24.)

So, if there be a Challenge to an Array, the other Party may demur. *Hard.* 112.

A Demurrer to a Challenge may be determined at *Niſi prius*. *Hard.* 112.

But a Demurrer to a Plea *after the laſt Continuance* ſhall be adjourned. *Ibid.*

If a Man demurs upon Evidence, he muſt admit the Evidence to be true. *Co. Lit.* 72. *a.* *Cro. El.* 751. 5 *Co.* 104. *a.* *R. All.* 18. *Pl. Com.* 411. *a.*

And therefore, if a Man demurs for that the Evidence is not ſufficient, and beſides ſays alſo, that there is no ſuch Writ as was offered in Evidence, and ſo

refers the Fact as well as the Law to the Court, an *Alias venire facias* ſhall go; for the Court cannot proceed to Judgmeht. *R. Al.* 18.

If a Man demurs upon the Evidence, the other Party muſt join in the Demurrer. *Co. Lit.* 72. *a.* or otherwiſe muſt wave the Evidence. *R.* 5 *Co.* 104. *a. Baker.* If the Evidence be Matter of Record, or in Writing. *Cro. El.* 751, 752.

But in an Information or other Suit by the King, if the Defendant demurs upon the Evidence, the King's Counſel need not join. *Co. Lit.* 72. *a.* 5 *Co.* 104. *a.*

So, if one will demur upon the Evidence given by Witneſſes, the other need not join; for the Credit of the Witneſſes may be referred to the Jury. *Cro. El.* 752.

So the Court may over-rule, if the Matter of Law ſeems clear, tho' the Party will demur. *R.* 2 *Rol.* 119.

(R) Iſſue.

ISSUE is, when both Parties put the Cauſe upon a Point of Fact to be tried by a Jury.

An Iſſue is either General or Special. *Co. Lit.* 126. *a.*

(R. 1.) General.

The General Iſſue is, when the Iſſue is joined on the Plaintiff's or Demandant's whole Charge in general: As, if the Tenant pleads in *Formedon*, *Ne dona pas.*

In Aſſize, *Nul Tort, nul Diſſeiſin.*

In *Quare Impedit*, *Ne diſturba pas.*

In Replevin, *Non cepit.*

In Debt, *Nil debet.* *Vide Poſt*, (2 W. 17.)

In an Action on a Statute, or on the Caſe, *Non culp.*

To the General Iſſue the Plaintiff cannot reply, but muſt join Iſſue. *Co. Lit.* 126. *a. Hob.* 271.

When a Plea muſt conclude in Iſſue to the Country. *Vide Ante*, (E. 32.)

When the General Iſſue ſhall be pleaded. *Vide Ante*, (E. 13.)

(R. 2.) Special.

A Special Iſſue is, when Iſſue is joined upon any particular Point.

(R. 3.) Muſt be upon an Affirmative and Negative.

An Iſſue proceeds out of two ſeveral Allegations of the Parties, the one Affirmative, and the other Negative. *Co. Lit.* 126. *a.*

And therefore two Affirmatives do not make a good Iſſue. *Ibid.*

As, if the Defendant pleads that *A.* is living, and the Plaintiff ſays that *A.* is dead, he muſt traverſe that *A.* is living, otherwiſe there cannot be a good Iſſue. *Sav.* 86.

So, if the Defendant, being Executor, pleads ſeveral Judgments, and no Aſſets *ultra*, and the Plaintiff replies that one of the Judgments is continued by Fraud, and that he has Aſſets *ultra* the others, it is not a good Iſſue without a Negative. *Semb.* 1 *Sand.* 338.

So, if the Defendant pleads that the Plaintiff is a Baſtard, and the Plaintiff replies that he is *Mulier*, he muſt add, *and not Baſtard*, in the Negative. *Kit.* 214. *b.*

Nor two Negatives; and therefore, if a Man takes a Traverſe which is a Negative, there muſt be an Affirmative after it, before the Concluſion to the Country. *Co. Lit.* 126. *a.*

So

So regularly the Plaintiff in his Replication ought not to conclude to the Country upon a Negative, without a Traverſe: As, in Treſpaſs, if the Defendant pleads that his Father was ſeiſed, and died ſeiſed, whereby it deſcended to him, the Plaintiff ſhall not reply, that the Father did not die ſeiſed *Et hoc, &c.* but muſt maintain his Count, and traverſe *abſque hoc* that the Father *obiit ſeiſitus*. *Sav.* 64.

Yet, there ſhall be a General Iſſue upon a Negative. *Sav.* 64.

So the King may join Iſſue on a Negative. *Dub. Sav.* 64.

And when there is a full Negative and Affirmative, it muſt always conclude to the Country. *Vide Ante*, (E. 32.)

But it is not neceſſary that the Negative and Affirmative be in preciſe Words: As, in Debt for Rent on a Leaſe for Years, if the Defendant pleads *Nothing in the Tenements*, and the Plaintiff replies, that he was ſeiſed in Fee, here is a good Iſſue. *Co. Lit.* 126. *a.*

If the Defendant claims a Way *non ſolum ire, equitare, verum etiam Carucis carriare*, and there be Iſſue thereon, it is good, for here is a ſufficient Affirmative. *R. Mar. pl.* 83.

Yet, if a Breach of Covenant be aſſigned, *quod non aſſignavit*, a Leaſe for Years, and the Defendant pleads *Non tranſpoſuit*, it is bad. *R.* 2 *Leo.* 116.

And for Neceſſity Iſſue may be joined on two Affirmatives. *Semb. Co.* 126. *a. Bro. Iſſue* 28.

So, if Iſſue be tendred by an Affirmative, and the other joins, it is good, tho' there was not a Negative: As, if an Executor pleads, *No Aſſets*, and the Plaintiff replies that he purchaſed another Writ, and then he had Aſſets, and tenders an Iſſue thereon, and the Defendant joins, it is good. *R.* 2 *Cro.* 580, 589. 2 *Rol.* 186, 204, 209.

[It is enough, if the ſecond Affirmative is ſo contrary to the firſt, that the firſt cannot in any Degree be true; ſo to Dureſs of Impriſonment pleaded to a Bond, it is a good Replication that Defendant was at large, at his own Diſpoſal, executed of his own free Will, and not for Fear of Impriſonment, concluding to the Country. *Tomlin* v. *Purlis*, *H.* 16 *G.* 2. *Str.* 1177. *Wilſ.* 6.]

(R. 4.) Muſt be upon a ſingle Point.

The Iſſue ought to be on a ſingle and certain Point. *Co. Lit.* 126. *a.*

And therefore, if after a Juſtification by Proceſs in falſe Impriſonment there be a Traverſe *abſque hoc quod eſt culpabilis aliter aut alio Modo aut in alio Loco*, and Iſſue joined thereon, the Judgment ſhall be arreſted for the Uncertainty of the Iſſue. *R.* 2 *Lev.* 164.

But if the Defendant, ſued as Executor, pleads Payment of ſeveral Sums due on ſeveral Bonds, and the Plaintiff replies *Quod non ſolvit*, ſuch a Sum to *A.* ſuch to *B. &c.* and concludes *Et de hoc ponit ſe ſuper Patriam*, it is well; for they are ſeveral Iſſues, and not one Multifarious Iſſue. *R.* 1 *Lev.* 281.

[If to Debt on Bond, Defendant pleads Inſolvent-Act, that he was beyond Seas a Fugitive for Debt, that he was a Perſon enabled to return, did return and ſurrender, and was duly diſcharged, and Plaintiff replies *not duly diſcharged*; he puts only the Diſcharge in Iſſue, and Defendant need only prove that, by producing the Duplicate. *Gillam* v. *Stirrup*, *T.* 8 *G.* 2. *B. R. H.* 145.]

[Tho' Iſſue muſt be taken on a ſingle Point, it is not neceſſary that ſingle Point ſhould conſiſt of a ſingle Fact; thus, if Defendant in Treſpaſs juſtifies under a Right of Common, and the Replication traverſes that the Cattle were Defendant's own, that they were Levant and Couchant, and that they were Commonable, it is not multifarious, for both Circumſtances are requiſite to the one Point of Defence. *Robinſon* v. *Raley*, *P.* 30 *G.* 2. 1 *B. M.* 316.]

(R. 5.) Not upon a Negative Pregnant.

(R. 5.) What ſhall be called ſo.

So an Iſſue on a Negative Pregnant (*viz.*) on Matter which imports other ſufficient Matter, is bad: As, in a Writ of Entry in *Conſimili Caſu*, if a Man counts of an Alienation in Fee, and the Defendant pleads that he did not alien in Fee, it is bad; for it implies that he aliened, tho' not in Fee. *Dy.* 17. *a.*

So in *Formedon*, where the Demandant counts on a Gift by Deed, if the Tenant ſays, *Ne dona pas* by Deed, it is bad; for this implies a Gift by *Parol. Co. Lit.* 126. *a.*

In Waſte againſt a Leſſee for Years, if the Defendant pleads that he did not leaſe for Years, it is bad, for it is a Negative Pregnant. *Kit.* 232. *b.*

In an Action againſt an Innkeeper, Plea, that the Goods were not ſtolen thro' Default of him or his Servants, is bad; for it is a Negative Pregnant. *Kit.* 233. *a.*

So in an Action for not taking Care of his Fire, Plea, that the Houſe was not burnt for Want of his good Care, is a Negative Pregnant. *Kit.* 233. *a. b.*

So, if the Day or Place is Parcel of the Iſſue. *R.* 2 *Lev.* 11.

In Debt on a Bond for Performance of a Covenant, which was, that he would not grant without the Plaintiff's Conſent, if the Defendant pleads that he did not grant without the Plaintiff's Conſent, it is bad. *R.* 2 *Cro.* 560.

In Treſpaſs, the Defendant juſtifies his Entry by the Plaintiff's Licence, Traverſe, *quod non intravit per Licentiam ſuam*, is a Negative Pregnant. *R.* 2 *Cro.* 87.

(R. 6.) What not.

But if the Matter implied be not ſufficient, it is not a Negative Pregnant: As, in Debt upon a Retainer in Huſbandry, if the Defendant pleads that he did not retain him in Huſbandry, it is not Pregnant; for a Retainer generally is not ſufficient to maintain his Count. *Bro. Iſſue* 25. *R.* 38 *H.* 6. 22.

So, if the Iſſue be tendred to the Point of the Action, it is not bad, tho' it be a Negative Pregnant: As, in an Action upon the *Stat. R.* 2. Plea, that he did not enter *contra Formam Statuti* is good, tho' a Negative Pregnant. *Kit.* 232. *b.*

So in an Action upon any Statute, that he did not do *contra Formam Statuti*, is good. *Kit.* 233. *a.*

So in Debt on a Bond to ſtand to an Award, ſo that it be delivered to the Parties, *&c.* Plea, that no Award was made and delivered to the Parties, is good, tho' a Negative Pregnant; for it is purſuant to the Condition, which is intire. *Ibid.*

(R. 7.) Yet it may be upon a Disjunctive.

But Iſſue may be upon a Disjunctive, where the Words of the disjunctive Propoſition are ſynonymous: As, an Iſſue that Gold was found in a Ship paſſing, or upon its Paſſage, from *London* to *R.* is good. *R. Hard.* 17, 19. for the Parts of the Disjunctive are ſynonymous.

That the Cuſtoms were not concealed or withheld. *Hard.* 17 *Dy.* 43. *b.*

That he paid or cauſed to be paid. *Hard.* 19.

That an Executor of his own Wrong *adminiſtravit ſeu aliter ad Uſum ſuum proprium convertit*. *R. Hob.* 49.

(R. 8.) Muſt be upon a material Point.

So, the Iſſue ought to be on a material Point, that may be well tried. *Co. Lit.* 126. *a.*

On the moſt material Point. *D.* 1 *Sand.* 22.

And therefore Place or Time ought not to be Part of the Iſſue, where they are not material. *R.* 2 *Sand.* 317. *Hard.* 40.

But if the Defendant alledges a Requeſt by *A.* ſuch a Day, and the Plaintiff ſays, *Non requiſivit prout* Defendant *allegavit*, this does not extend to the Time, but only to the Subſtance of the Plea. *R. Hard.* 40.

[A Contract for Stock ſhould be regiſtered before 1ſt *November* 1721;——If Defendant pleads that the Contract was not regiſtered before 1ſt *November* 1720, *ſecundum formam Stat.* and Plaintiff replies, it was regiſtered *ſec' form' Stat'.* it is good, and the Day ſhall be rejected as Surpluſage. *Woolley* v. *Briſcoe*, *T.* 9 *G. Str.* 554.]

[In Debt on Bond, if Defendant pleads Payment of Principal and Intereſt before the Day, and before purchaſing the Original, Plaintiff may reply *non ſolvit Modo et Forma*. *Martin* v. *Pritchard*, *H.* 11 *G. Str.* 622.]

[In Debt on Bond, if Defendant pleads *plene Adminiſtravit*, and Plaintiff replies Aſſets ſufficient to ſatisfy the *Damages* aforeſaid, and Iſſue is joined, and a Verdict for Plaintiff, it is well; for the Word (Damages) is Surpluſage. *Collet* v. *Maſterman*, *M.* 22 *G.* 2. 1 *Wilſ.* 238.]

(R. 9.) And the Whole ſhall be put in Iſſue.

And the whole Matter of Complaint ſhall be put in Iſſue: As, in *Aſſumpſit* for Service for ſuch a Time, the Defendant ſhall put the whole Time in Iſſue. 1 *Sand.* 268, 269.

So, in an Action on the Caſe for ſtopping three Lights, every Part of the Injury ſhall be put in Iſſue, and therefore a Juſtification of the Stopping of two Lights, with a Traverſe that he ſtopped three, is bad. *R. Yel.* 225. 1 *Sand.* 268. 2 *Sand.* 206.

(R. 10) Upon a triable Point.

So it ought to be upon a Point, which may be well tried: As, if it be alledged, that a Woman was *enſeint* by her Huſband at the Time of his Death, the Iſſue muſt be, *if ſhe was enſeint*, not if *enſeint* by her Huſband, for *Filiatio non poteſt probari*. *Co. Lit.* 126. *a.*

[No Iſſue can be offered that is contrary to the Record. *Crokat* v. *Jones*, *M.* 13 *G. Str.* 734. *Ld. Raym.* 1441.]

(R. 11.) The Form of joining Iſſue, and when and how the Iſſue ſhall be entred, &c. for Trial.

If the Defendant tenders an Iſſue, he ſhall ſay, *Et de hoc ponit ſe ſuper Patriam*. *Co. Lit.* 126. *a.*

If the Plaintiff or Demandant, *Et de hoc petit quod inquiratur per Patriam*. *Ibid.*

And if *hoc petit* be omitted, it is bad. 3 *Lev.* 65.

But if the Plaintiff joins Iſſue in theſe Words, *Et prædict'*, Defendant *ſi' lit'*, where it ſhould be, *præd'* Plaintiff, this will be a Jeofail. 1 *Rol.* 200. *l.* 2. 25.

Or, *Quod eſt cul'*, for *Non eſt inde cul'*. 1 *Rol.* 200. *l.* 10.

So, if the Defendant ſays, *Solvit ad ſecundum Diem M.* and the Plaintiff replies, *Non ſolvit prædicto ſecundo Die Aug.* and ſo miſtakes the Month. *R.* 2 *Cro.* 550. 2 *Rol.* 135.

So, if the Defendant ſays, *Solvit* 20*l.* and the Plaintiff *Non ſolvit præd'* 30*l.* *R.* 2 *Cro.* 586. *R. Cro. Car.* 593.

So in Treſpaſs, if the Defendant pleads a Licence to the Huſband to enter with his Wife, and the Plaintiff replies, *Quod non dedit Licentiam* to Huſband and Wife; for the Variation is material. *R.* 2 *Lev.* 194.

[If Plaintiff replies, and concludes to the Country, without any *ſimiliter* on the Part of Defendant, it is not aided by Verdict, nor can the Verdict be amended. *Cooper* v. *Spencer*, *M.* 11 *G. Str.* 641.]

[On Replication *nul tiel Record*, compleat Iſſue is joined, and there is no Need of Rejoinder. *Barnes* 335.]

[On *nul tiel Record* pleaded, the Record muſt be brought in at the day given. *Barnes* 343.]

By the uſual Courſe, four Days are given to join Iſſue, demur, or plead over. 1 *Sand.* 318.

And if the Clerk of the Papers draws the Iſſue, and delivers the Paper-Book to the Defendant's Attorney, who, within the four Days waives the Iſſue, and makes a frivolous Rejoinder for Delay, and, upon a Summons before the Secondary, will not take Iſſue, the Plaintiff may ſign Judgment by *nil dicit*. *R.* 1 *Sand.* 318.

In *C. B.* if the Defendant pleads the general Iſſue, (for which it is ſufficient that his Attorney ſigns the Plaintiff's Attorney's Dogget) the Plaintiff's Attorney draws and delivers a Copy of the Iſſue to the Defendant's Attorney, who muſt receive and pay for it. *Com. Att.* 40.

[If a Priſoner appears by Attorney, he ſhall pay for the Iſſue-book, or Judgment may be ſigned; but not if he appears in Perſon. *Everall* v. *Maſon*, *H.* 27 *G.* 2. 2 *Wilſ.* 11.]

[Defendant's Attorney muſt pay for the Iſſue (even if left in the Office) at his Peril. *Barnes* 243.]

[But if Plaintiff demands more than is due, Judgment ſigned ſhall be ſet aſide. *Barnes* 263, 275.]

[If Judgment is ſigned for want of paying for the Iſſue, the Court will ſet it aſide, on Payment of Coſts of Motion, and for the Iſſue, if it is to the Country; but not if it is on *nul tiel Record* to a Judgment, and there are no Merits to be tried. *Everal* v. *Maſon*, *H.* 27 *G.* 2. 2 *Wilſ.* 11.]

[If it be tendered to a Porter at Defendant's Attorney's Chambers, and not paid, Judgment may be ſigned. *Barnes* 253.]

[Defendant pleads in the Country, Iſſue tendered in the Country, and refuſed to be paid for, Judgment may be ſigned. *Barnes* 239.]

[An Agreement that Iſſue ſhall be delivered in the Country is void; therefore, if notwithſtanding ſuch Agreement it is tendered in Town, and not paid for, Judgment may be ſigned. *Barnes* 251.]

[Yet if Declaration is delivered and accepted, *Oyer* demanded and given, Plea demanded in the Country, it is good, and Judgment may be ſigned.]

But in *B. R.* the Defendant's Attorney has the Benefit of the Iſſue. *C. Att.* 324.

So after a ſpecial Plea to Iſſue in *C. B.* the Plaintiff's Attorney delivers a Copy of the Iſſue, *&c.*

[If Plaintiff has delivered the Iſſue-book to Defendant, and afterwards miſlays the Papers, the Court will order Defendant to give him a Copy of the Iſſue. *Wiar* v. *Smith*, *H.* 7 *G.* *Str.* 414.]

[In Rules for entering Iſſues the Day of Notice is excluſive; and *non pros* ſigned a Day too ſoon ſhall be ſet aſide. *Barnes* 318.]

In *B. R.* after Plea to Iſſue, it is left with the Clerk of the Papers, who gives a Rule to the other Side to join or demur, and draws the Iſſue, and ſhall be paid for the Iſſue-book. *Com. Att.* 325.

If the Defendant gives a Rule to the Plaintiff to enter his Iſſue, if the Action lies in *London* or *Middleſex*, the Plaintiff muſt bring the Record into the Office within four Days after Notice of the Rule, otherwiſe he ſhall be nonſuited. *Pr. R.* 274.

And, if the Plaintiff has given Notice of Trial, the Rule for entering the Iſſue may be given the ſame Term, in which Iſſue is joined, in an Action in *London* or *Middleſex*. *Pr. R.* 275.

In an Action in another County, on ſuch Rule (which ſhall not be the ſame Term in which Iſſue is joined) the Plaintiff muſt enter his Iſſue before the Continuance-day of that Term. *Pr. R.* 274.

And if the general or ſpecial Iſſue be not entred in due Time, the Plaintiff ſhall be nonſuited. *Lut.* 98.

The

The Copy of the Iſſue to be tried in *London* or *Middleſex*, on a Record of a precedent Term, ſhall be brought to the Clerk of the Treaſury to be ingroſſed four Days before the Day of Trial. *Per Rule, M.* 1654. (*Vide Mills* 30.)

And no Record of *Niſi prius* ſhall be ſigned before Iſſue entred on the Roll. (*Vide Mills* 31.)

[In *C. B.* no Record or Writ of *Niſi prius* received at Sittings after Term in *Middleſex*, unleſs entered with Marſhal within two Days after Term; and in *London* the Day before the Day of Adjournment. *Barnes* 494.]

And the Iſſue ſhall be entred of the ſame Term in which it is joined. *Per Rule, P.* 5 *W. & M.* (*Vide Mills* 111.)

The Record of *Niſi prius* ſhall be ingroſſed on Parchment of the ſame Breadth with the Rolls of the Court. *Per Rule, Tr.* 29 *Car.* 2. (*Vide Mills* 70.)

And the Prothonotary ſhall not ſign it, if it is not ingroſſed and entred upon the Roll in a fair Hand, and every Pleading begin a new Line, and with great Letters, and if there are divers Counts they ſhall be numbered in the Margin. *Per Rule, Tr.* 29 *Car.* 2. (*Vide Mills* 70.)

And the Officer who ſigns, and the Clerk of the Treaſury who ingroſſes it, ſhall take the ſame Care. *Tr.* 29 *Car.* 2. (*Vide Mills* 70.)

The Records of *Niſi prius* of *C. B.* ſhall be ſigned by the Prothonotary, and ſigned and ſealed by the Clerk of the Treaſury or his Deputy, within three Weeks after every *Hilary* and *Trinity* Terms, and not after without ſpecial Warrant. *Per Rule, Tr.* 29 *Car.* 2. (*Vide Mills* 72.)

If, after the Record of *Niſi prius* is ſigned, the Judge is made a Knight, it is not Error. *R. Lat.* 161.

[The Delivery to a Gaoler of Notice of Trial againſt a Priſoner ſhall be good, within the Reaſon of 4 & 5 *W. & M.* which directs the Delivery of a Declaration to be good. *Whitehead* v. *Barber, H.* 6 *G. Per Cur. on Conference with the other Courts. Str.* 248.]

[Giving Notice of Trial at the End of Half a Year after Iſſue joined, prevents Neceſſity of giving a Term's Notice till a Year after the laſt Notice given and countermanded. *Green* v. *Gauntlett, M.* 9 *G. Str.* 531.]

[When a Term's Notice of Trial is required on an old Iſſue, it muſt be given before the *Eſſoin-day. Bogg* v. *Roſe, P.* 15 *G.* 2. *Str.* 1164. *Contra. Harvey* v. *Porter, M.* 6 *G. Str.* 211.]

[By *Stat.* 14 *G.* 2. *c.* 17. Defendant living forty Miles off, ſhall have ten Days Notice of Trial in Writing, and ſix Days Notice of Countermand, on Pain of Coſts.]

[And Verdict ſhall be ſet aſide for Want of it. *Barnes* 305.]

[*Take Notice of Trial at next Aſſizes*, without Date, County or Name, is good on the Back of the Iſſue, but not on a ſeparate Paper. *Henbury* v. *Roſe, M.* 19 *G.* 2. *Str.* 1237.]

[Short Notice of Trial can be given but once, and Notice can be continued but once; but if the full Time is given, the Word *continue* ſhall not vitiate it. *Barnes* 292.]

[Plaintiff can continue his Notice of Trial only once in a Term, and if Verdict is obtained on ſecond, Defendant making no Defence, it ſhall be ſet aſide. *Green* v. *Giffard, M.* 13 *G.* 2. *Str.* 1119.]

[If the Iſſue is of *Michaelmas*, Notice by Proviſo may be given of *Hilary*. *Barnes* 295.]

[If Defendant lives in *Ireland*, eight Days Notice of Trial is bad. *Barnes* 297.]

[Notice of Trial cannot be given in the Country, but countermands may. *Barnes* 298. Q.]

[But Notice on an old Iſſue may be given, either in Town or Country. *Barnes* 306. Q. Whether not on any?]

[Defendant muſt give the ſame Notice as Plaintiff. *Barnes* 299.]

Notice cannot be countermanded and continued at the ſame Time. *Barnes* 301.]

[If

[If Notice of Trial is countermanded, two Days in a Town cauſe, and four Days before the Aſſizes in a Country Cauſe, Coſts ſhall not be paid, but one Day muſt be excluſive. *Whitlock* v. *Humphreys*, *M.* 3 *G.* 2. *Frogmorton* v. *Norcliffe*, *M.* 6 *G.* 2. *Str.* 849.]

[In a Country Cauſe, two Days countermand to the Attorney in the Country is ſufficient. *Mendapace* v. *Humphreys*, *P.* 10 *G.* 2. *Str.* 1073. *B. R. H.* 369. *Barnes* 298. altered by 14 *G.* 2. *c.* 17.]

[Commiſſion-day of Aſſize on *Monday*, Countermand on *Saturday* good. *Barnes* 305.]

(R. 12.) When Misjoining an Iſſue ſhall be aided.

(R. 12.) By the *St.* 32 *H.* 8. 30.

But by the *St.* 32 *H.* 8. 30. After Verdict, Misjoining of Iſſue is aided. *Vide Amendment*, (O.)

And therefore, it ſhall be aided, if Iſſue is joined upon bad Pleading. *Ibid.*

Or, upon an immaterial Point, or a Negative Pregnant. *Ibid.*

Or, if the Iſſue comprehends more than is material. *R. Hob.* 119.

But it is not aided, if it be a void Iſſue. *Vide Amendment*, (O.)

(R. 13.) By Verdict.

So, a bad Iſſue may be aided by a Verdict: As, in Debt upon a Bond againſt the Executor of *A.* who pleads *Non eſt Factum ſuum*, if the Jury finds that it is the Deed of *A.* for the Iſſue was upon an Affirmative and Negative, and by the Finding of the Jury it appears, that the Plaintiff had Cauſe of Action. *R. Ray.* 458.

Yet, in Debt upon a Bond to pay the clear Profits of a Mine, the Defendant pleads Performance, the Plaintiff replies, that there were Profits to the Value of 20*l.* and the Defendant has not paid; the Defendant rejoins, that there were no clear Profits, and Iſſue thereupon, and the Jury find that there were clear Profits, *Modo et Forma* as the Plaintiff has replied; this was not aided by the Verdict. *R.* 2 *Lev.* 135.

[If to Treſpaſs for breaking his Cloſe, Defendant pleads it was his proper Lands, and Plaintiff replies it was his Eſtate of Inheritance, and proper Lands, and not of Defendant; it is cured by Verdict. *Cary* v. *Hinton*, *P.* 7 *G.* 2. *Str.* 973.]

(R. 14.) When an Iſſue ſhall be tried.

If one of the Defendants pleads in Abatement a Plea, which abates the Writ as to all, and the others plead to Iſſue, the Iſſue ſhall not be tried till the Plea in Abatement is determined. *Kit.* 239. *a.*

Tho' the Plea to Iſſue was firſt taken. *Ibid.*

If the Defendant demurs to Part of the Declaration, and takes Iſſue to other Part, there ſhall be Judgment on the Demurrer before the Iſſue is tried, regularly; tho' the Court may do otherwiſe at Diſcretion. *Co. Lit.* 72. *a.* *Lat.* 4. 1 *Leo.* 82.

If, a Plea in Abatement being over-ruled, the Defendant pleads *Not guilty*, the whole Record muſt be entred, otherwiſe it will be Irregular. *R. Carth.* 499.

So, if a new Trial is granted, and the Record is on a new Roll in a ſubſequent Term. *Ibid.*

But, in an Information for counterfeiting Receipts, and by them receiving Money out of the *Exchequer*, if the Defendant traverſes the Counterfeiting, and pleads to the Reſidue, whereon there is a Demurrer, the Court will try the Iſſue firſt. (*Reported in Comyns's Reports* 109.)

(R. 15.) When it may be waived.

If ſeveral Iſſues are joined and brought to Trial, yet the King by his Prerogative (where the King is concerned) may waive any Iſſue. 1 *Bul.* 197.

So, after Evidence given to any of the Iſſues, on which the Jury are ready at the Bar to deliver their Verdict, the Attorney-General for the King may waive any Iſſue whereon no Evidence has been given. *R.* 1 *Bul.* 197.

So, after Notice of Trial, the King may waive the Trial without Payment of Coſts. 1 *Sal.* 193.

Otherwiſe, the Proſecutor. 1 *Sal.* 193.

But, if Evidence is given on the Iſſue, the Attorney-General cannot waive it, when the Jury is at the Bar to deliver their Verdict. 1 *Bul.* 197.

So, after Verdict pronounced, the King cannot waive Part of the Iſſues, and take a Verdict for the Reſidue. *Ibid.*

(R. 16.) When the Trial deferred.

So, for Cauſe, the Court may put off the Trial on Payment of Coſts, after Notice of Trial given: As, if a Material Witneſs is beyond Sea.

But in ſuch Caſe, if the Coſts are not paid, the Plaintiff may proceed to Trial, and not have an Attachment. 1 *Sal.* 83.

So a Trial ſhall not be put off where the Plaintiff is Adminiſtrator, becauſe a Suit for Adminiſtration in the Eccleſiaſtical Court is not determined. *Sal.* 646.

[If one moves to put off Trial on the Day of Trial, Notice muſt be given of the Motion, and alſo Copies of the Affidavits to be produced. *Edwards* v. *Veſey*, *T.* 8 *G.* 2. *B. R. H.* 128.]

[The Court will not put off a Trial, till a third Perſon is compelled in Equity to produce a Deed, unleſs there appears Colluſion with Plaintiff, and Affidavit is made that Defendant cannot go to Trial ſafely without it. *Anon. T.* 10 & 11 *G.* 2. *B. R. H.* 390.]

[If Plaintiff does not go on Trial according to Notice, the Court will not ſtay Proceedings till he has paid Coſts, though he is neceſſitous and abſconds, in any Caſe but Ejectment. *Wareing* v. *Potter*, *T.* 10 & 11 *G.* 2. *Andr.* 17.]

[If previous to a Trial Libels have been diſperſed by one of the Parties to influence the Jury and Witneſſes, it may be put off; but the Court will not afterwards put it off, till the Libellers (Printers and Bookſellers) have been tried on an Information. *Rex* v. *Gray*, *H.* 31 *G.* 2. 1 *B. M.* 510.]

[To put off Trial for Abſence of Witneſs, when there is any Suſpicion, it muſt be made appear that the Witneſs is material, that the Party applying has been guilty of no Neglect, and that there is reaſonable Expectation of being able to procure their Attendance at the future Time prayed. *Rex* v. *Chevalier D'Eon*, *T.* 4 *G.* 3. 3 *B. M.* 1513.]

[Motion to put off Trial muſt be two Days before Trial. *Barnes* 437, 438.]

[If the Materialneſs of Witneſs did not appear ſooner, Trial may be put off after the Cauſe called. *Barnes* 452.]

[Trial will not be put off on Affidavit of third Perſon that *A.* is material Witneſs; none but the Party can know that. *Barnes* 437.]

[Nor on Affidavit of Defendant's Wife of her Belief. *Ibid.*]

[This is exploded. *Barnes* 448.]

[Affidavit for new Trial muſt be poſitive as to Witneſſes being material; it muſt add that Party cannot ſafely proceed without; but to that, Belief is ſufficient. *Ibid.*]

[On Affidavits that a material Witneſs is not expected till ſuch a Time, Trial may be put off till Term after that Time. *Barnes* 440.]

[If Witneſs leaves Town after Notice of Trial, it ſhall not be put off. *Barnes* 442.]

[In Action for Words, general Affidavit of Abſence of Witneſſes is ſufficient. *Barnes* 442.]

[Affidavits ſworn before a Vice-conſul abroad may be read. *Barnes* 466.]

(R. 17.) When there ſhall be a new Trial.

[Trials by Jury, in Civil Cauſes, could not ſubſiſt now, without a Power, ſomewhere, to grant new Trials. *D. per Ld. Mansfield. Bright* v. *Eynon*, T. 30 & 31 *G.* 2. 1 *B. M.* 390.]

[New Trials were granted before 1655. This appears from *Slade*'s Caſe, (1648.) *Style* 138. and from *Wood* v. *Gunſton*, *Style* 466. It cannot be traced far back, becauſe old Reports give no account of Determinations on Motions. *Ibid.*]

If Regular Notice of Trial was not given, the Verdict ſhall be diſcharged upon Motion, and a new Trial granted. *Pr. Reg.* 248.

As, if Notice was not given to the Defendant himſelf, his Attorney or Solicitor, eight Days excluſive, if the Trial be in *London* or *Middleſex*, or within thirty or forty Miles Diſtance. *Pr. Reg.* 388, 389.

If there was not fourteen Days Notice, where the Party is at the Diſtance of forty Miles or more. *Pr. Reg.* 389. *Mod. Ca.* 18.

[The forty Miles from *London* to intitle to fourteen Days Notice of Trial, ſhall be computed and not meaſured Miles. *Bates* v. *Pettipher*, *M.* 7 *G.* 2. *Str.* 954. *Oſgood* v. *Lyon*, *M.* 18 *G.* 2. *Str.* 1216.]

If there was not a Term's Notice, where the Iſſue was joined a Year before. *Pr. Reg.* 387. 1 *Sid.* 34. *viz.* if four Terms have paſt without Proceeding, ſince the Term in which the Iſſue was joined. *Mod. Ca.* 18. *Sal.* 645, 650.

And to make a Term's Notice, it ought to be given regularly in the prior Term *ſedente Curia*. *Mod. Ca.* 18, 58.

So a Proceeding in the Vacation after the fourth Term, by taking out a *Venire facias*, *&c.* teſted the laſt Day of the Term, is not ſufficient, tho' it be in Law an Act within the Term. *R. Mod. Ca.* 57. *Sal.* 457, 650.

But a Term's Notice is not neceſſary, for the uſual Notice is ſufficient, where the Delay for a Year after Iſſue joined was by an Injunction out of the Court of *Chancery* ſerved at the Suit of the Defendant. *R.* 1 *Sid.* 92.

Or by the Defendant's claiming Privilege of Parliament. *Ibid.*

So, it is not neceſſary, where the Defendant gives Notice of Trial by *Proviſo*. *Dub.* 1 *Sid.* 34.

Nor where there was Notice of Trial (tho' countermanded), or any Proceeding by the Plaintiff, within the Year. *R. Mod. Ca.* 18, 58.

Nor where the Proceedings have not ceaſed for a Year, excluſive of the Term in which Iſſue was joined. *Mod. Ca.* 18, 58.

So fourteen Days Notice is not neceſſary, where there are not fourteen Days between the Term and Aſſizes. *Mod. Ca.* 18.

[Motion for new Trial muſt be within the firſt four Days of Term. *Barnes* 446.]

So a new Trial ſhall be granted, if the Judge certifies the Verdict to be contrary to the Evidence. 2 *Mod.* 199. *Barnes* 439.

[The Certificate of the Judge reporting the Matter of Fact, as appearing before him at the Trial, is concluſive. *Rex* v. *Poole*, *P.* 7 *G.* 2. *B. R. H.* 23.]

[If Cauſe tried before Judge of another Court, there muſt be Affidavit of what paſſed on Trial. *Barnes* 447.]

If, on Information *Quo Warranto*, where there are many Iſſues, the Jury find a general Verdict for the King, and the Judge reports that two of the Iſſues were found againſt Evidence, a new Trial ſhall be granted; there ſhould be a ſeparate Verdict upon each Iſſue. *Rex* v. *Cockerell*, *T.* 11 & 12 *G.* 2. *Andr.* 260.]

[If there is Evidence on both Sides, it cannot be called a Verdict againſt Evidence; and there ſhall not be new Trial, tho' the Jury found againſt the Party with whom the Judge thinks the Weight of Evidence lies, or for whom he ſums up. *Aſhley* v. *Aſhley*, *Smith* v. *Huggins*, *M.* 14 *G.* 2. *Str.* 1142. *Anon.* *T.* 16 *G.* 2. 1 *Wilſ.* 22.]

New

[New Trial may be granted tho' Evidence on both Sides, if *all* the Witneſſes to a Releaſe are not examined. *Norris* v. *Freeman*, *M.* 10 *G.* 3. 3 *Wilſ.* 38.]

[New Trial may be granted in a criminal Caſe, on Report of the Judge and Affidavits of the Jury, that the Verdict againſt the Defendant was taken contrary to their Meaning, and to the Judge's Directions in Point of Law. *Rex* v. *Simmons*, *T.* 25 & 26 *G.* 2. 1 *Wilſ.* 329.]

[After Trial at Bar, if the Evidence is doubtful, a new Trial ſhall not be granted. *Smith* v. *Parkhurſt*, *H.* 12 *G.* 2. *Andr.* 315. *Str.* 1105.]

[So if Maſter brings Treſpaſs *vi et armis* for taking his Apprentices, and it appears that the Apprentices being impriſoned by their Maſter in a Lock-up-Houſe of *A.* and fearing to be ſold to *Guinea*, complain to Quarter-Seſſions, who diſcharge them; and *W.* a Sea-lieutenant agrees with them to ſerve, gives *A.* Money to keep them that Night, and next Morning ſends Preſs-gang with a Note to *A.* to deliver them, which he does, taking a Receipt; and on Trial all the Defendants (the Juſtices and *W.*) are found *Not guilty*; although *W.* ought to have been found Guilty on the Evidence, yet, as he appeared to act with good Intention, the Court will not grant new Trial. *Reavely* v. *Mainwaring*, *H.* 2 *G.* 3. 3 *B. M.* 1306.]

Or, if he allowed what was not, or denied what was, good Evidence. *Mod. Ca.* 307, 242.

[If Defendant in an Action for a Seizure *ſine aliqua probabili cauſa*, is not permitted to give Evidence that there was a probable Cauſe. *Bill* v. *Robinſon*, *M.* 1719. *Bunb.* 49.]

[And in ſuch Caſe it may be granted, though a ſpecial Verdict has been ſigned by the Counſel on both Sides. *Namink* v. *Farwell*, *M.* 1719. *Bunb.* 51.]

[If on an Iſſue directed to try a *Modus* for five Cloſes, it appears that the *Modus* extends to two Cloſes more, (for the ſame Sum,) and the Judge thereupon directs the Jury to find for Plaintiff, againſt the *Modus*; a new Trial ſhall be granted. *Taylor* v. *Walker*, *P.* 1729. *Bunb.* 267.]

[If the Judge directs the Jury on a Point of Law, and they find a Verdict contrary to his Direction; or, if he directs them to find ſpecially, and they find a general Verdict, there ſhall be a new Trial granted. *Rex* v. *Poole*, *P.* 7 *G.* 2. *B. R. H.* 23.]

[Unleſs it appears to the Court, that the Judge was miſtaken. *Ibid.*

[Or, that it is impoſſible that Defendant ſhould have Judgment, by Reaſon of his bad Plea. *Ibid.*]

[Replevin for taking Cattle; Avowry, Damage-feaſant; Plea, Right of Common; Replication, a Cuſtom to incloſe, and the Lands uninclоſed free from his Common, and the Lands incloſed free from the Common of others; if it is proved at the Trial, that the incloſed Lands are free from Common, (though it is ſaid by ſome Witneſſes, that if one Acre is left uninclоſed, he has a Right to Common on the other's uninclоſed Lands) if the Judge ſays the Cuſtom being intire is not proved, and Jury finds in conſequence for Plaintiff, there ſhall be new Trial for the Miſdirection. *How* v. *Strode*, *M.* 6 *G.* 3. 2 *Wilſ.* 269.]

If the Party was diſappointed of Evidence by Sickneſs, or other Accident, without his Default. *Mod. Ca.* 22.

[If the beſt Evidence is not produced by him for whom the Verdict is, as only a Copy of Biſhop's Inſtitution-book to prove Preſentation by the Patron in *quare impedit*; for the Preſentation or the Inſtitution-book itſelf might have been produced. But, *N. B.* in *quare impedit* Security muſt be given for Coſts and Profits of Living, if ſecond Verdict for the ſame Party. *Tillard* v. *Shebbeare*, *M.* 8 *G.* 3. 2 *Wilſ.* 366.]

Or the Witneſſes or Counſel were abſent by Surpriſe. *Sal.* 645.

If a Juror declared a Deſign to give a Verdict for one of the Parties before the Trial. *Sal.* 645.

[If a Juror challenged, be ſworn on the *Tales* by another Name. *Parker* v. *Thoroton*, *M.* 12 *G.* *Str.* 640. 2 *Ld. Raym.* 1410.]

[Becauſe the Jury toſſed up, whether 300 *l.* or 500 *l.* Damages. *Meliſh* v. *Arnold*, *M.* 1719. *Bunb.* 51.]

[Becauſe the Jury drew Lots, whether to find for Plaintiff or Defendant, tho' it happen according to Evidence, and the Judge's Opinion. *Hale* v. *Cove*, *M.* 12 *G.* *Str.* 642.]

[If a Verdict is obtained by a Trick contrary to Conſcience, tho' ſtrictly regular, the Court will ſet it aſide, and make the Party pay Coſts, and order new Trial; as if Plaintiff refuſes to produce a Note he had received in Payment, and which was not paid by his own Negligence, becauſe Defendant had not given him Notice to produce it. *Anderſon* v. *George*, *P.* 30 *G.* 2. 1 *B. M.* 352.]

[If a Verdict is founded on a Note, which is manifeſtly obtained by *Fraud*, whereas the Jury only conſidered the Queſtion of *Forgery*, the Court will ſet it aſide, and grant new Trial. *Bright* v. *Eynon*, *T.* 30 & 31 *G.* 2. 1 *B. M.* 390.]

[If the Merits have not been tried, becauſe Plaintiff could not give material Matter in Evidence on the Iſſue joined, and therefore a Verdict againſt him, the Court will ſet it aſide, though it was right on the Evidence given, and order new Trial on Payment of Coſts. *Dayrolles* v. *Howard*, *P.* 3 *G.* 3. 3 *B. M.* 1385.]

[If there is Reaſon to ſuſpect a Verdict to have been obtained by Perjury, the Court will grant it. *Fabrillus* v. *Cook*, *M.* 6 *G.* 3. 3 *B. M.* 1771.]

[If on a Verdict ſubject to the Opinion of the Court on a Caſe ſtated, ſufficient Facts are not ſet forth, or if on a ſpecial Verdict it is defectively found, the Court will grant new Trial. *Bond* v. *Seawell*, *M.* 6 *G.* 3. 3 *B. M.* 1773.]

[Defendant pleads four Pleas, Plaintiff joins Iſſue on three, taking no Notice of fourth, and Verdict for him, he ſhall reply iſſuably or demur; if he replies, new Trial; if he demurs, Proceedings ſtayed till Argument. *Barnes* 465.]

[If Sheriff on Inquiry has admitted improper Evidence, whereby Damages leſſened, Court will order new Trial. *Barnes* 448.]

[On the Trial of a Traverſe of an Inquiſition of Lunacy, if the Defendant is not well, and cannot attend the Trial, a new Trial ſhall be granted. *Rex* v. *Roberts*, *P.* 17 *G.* 2. *Str.* 1208.]

[If the Merits have not been tried, Court will grant new Trial for Variance between Iſſue delivered and Record, tho' not material. *Barnes* 464.]

[If the Demand is certain, Court will ſet aſide Damages if too ſmall, not where uncertain. *Barnes* 455.]

[There may be a new Trial after a former new Trial. *Goodwin* v. *Gibbons*, *T.* 7 *G.* 3. 4 *B. M.* 2108.]

[It may be granted for exceſſive Damages, but not a third Trial. *Chambers* v. *Robinſon*, *H.* 12 *G.* *Str.* 691. *Note*, This Caſe was denied to be Law by *Pratt* C. J. *Beardmore* v. *Carrington*, *P.* 4 *G.* 3. 2 *Wilſ.* 244.]

[Verdict ſhall not be ſet aſide for Smallneſs of Damages, though it may for exceſſive Damages. *Hayward* v. *Newton*, *M.* 6 *G.* 2. *Str.* 940. *Barker* v. *Dixie*, *T.* 9 *G.* 2. *Str.* 1051. *B. R. H.* 279. *Barnes* 445.]

[But Inquiſition was ſet aſide, and new Inquiry granted, for Smallneſs of Damages. *Tutton* v. *Andrews*, *T.* 14 & 15 *G.* 2. *Barnes* 448.]

[New Trial may be granted after Nonſuit, as if a Judge has directed it, becauſe he thought there was not ſufficient Evidence that an Innkeeper had been ſuch a Trader as made him liable to the Bankrupt Laws. *Buſcall* v. *Hog*, *M.* 11 *G.* 3. 3 *Wilſ.* 146.]

[If the Plaintiff is nonſuited, and the Nonſuit recorded, there cannot be a new Trial, for the Plaintiff is out of Court. *Serle* v. *Ld. Barrington*, *M.* 11 *G.* 2 *Ld. Raym.* 1370.]

[If Plaintiff in Ejectment on Trial will not produce a Deed which is in Court, tho' Notice has been given to do it, and is thereupon nonſuited, the Court will not grant new Trial. *Roe* v. *Harvey*, *M.* 10 *G.* 3. 4 *B. M.* 2484.]

But there ſhall not be a new Trial on Account of the Abſence of a Witneſs, whom the Party might have had without his Neglect. *Mod. Ca.* 22. *Sal.* 647. *Fig.* 40. [*Price* v. *Brown*, *H.* 12 *G.* *Str.* 691. *Cooke* v. *Berry*, *T.* 18 *G.* 2. 1 *Wilſ.* 98. *Barnes* 439.]

Nor

Nor after two Verdicts for the ſame Party, without Proof of Practice. *Mod. Ca.* 22.

Nor upon an Indictment or Information, where the Defendant is acquitted, tho' contrary to the Direction of the Judge, without Proof of Practice. *Sho.* 336. *Sal.* 646. 1 *Lev.* 9. 1 *Sid.* 153.

[New Trial ſhall not be granted, if Defendant is acquitted on Indictment for not repairing Highway. *Rex* v. *Silverton*, *P.* 24 *G.* 2. 1 *Wilſ.* 298.]

[No new Trial on a feigned Iſſue found for Defendant, where the Verdict againſt him would have the ſame Conſequence as a Verdict in a criminal Proſecution. *Rex* v. *Praed.* *Rex* v. *Edwards.* *St. Ives Cauſes.* *M.* 9 *G.* 3. 4 *B. M.* 2257.]

Nor where the Action is Rigorous, as for not taking Care of his Fire, *&c.* *Sal.* 644, 648, 653. *R.* 5 *Mod.* 88.

Nor after an Indictment for a capital Offence.

Or for Perjury, tho' the Witneſſes were abſent by Practice. 1 *Sid.* 149, 153.

[New Trial is never granted on penal Statute, if Verdict for Defendant, if no Miſbehaviour appears in him. *Mattiſon* v. *Allanſon*, *M.* 19 *G.* 2. *Str.* 1238. *Fonereau* v. —— *P.* 10 *G.* 3. 3 *Wilſ.* 59.]

[No new Trial in a *qui tam* after Verdict for Defendant, though againſt the Judge's Directions. *Seymour* v. *Day*, *P.* 4 *G.* 2. *Str.* 899. *Jervois* v. *Hall*, *P.* 16 *G.* 2. 1 *Wilſ.* 17. *Barnes* 466.]

[Yet it may be granted on an Information of Seizure for fraudulent Exportation, where Verdict is for Defendant, where nothing is forfeited but the Goods. *Robinſon* v. *Lequeſne*, *T.* 1728. *Bunb.* 253.]

Or, in *Quo Warranto*, where the Defendant is acquitted. *Dub.* 2 *Mod. Ca.* 207.

[It may if the Judge certifies it was againſt Evidence; but the twelve Judges equally divided, and no new Trial could be granted. *Rex* v. *Bennet*, *T.* 4 *G. Str.* 101.]

In *Quo Warranto*, to which Defendant pleads an Election under the Nomination of *B.* and *A.* Bailiffs, it is no Cauſe for a new Trial, that the Judge directed a Judgment of *Ouſter* in *Quo Warranto* againſt *B.* and *A.* for acting as Bailiffs; eſpecially if Judgment of *Ouſter* muſt have been againſt Defendant, though this Iſſue had not been againſt him. *Rex* v. *Hebden*, *P.* 12 *G.* 2. *Andr.* 388.]

It ſhall not be in an Inferior Court. *Sal.* 650.

Nor ſhall be for Want of Notice, if the Defendant made a Defence. *Sal.* 646.

Nor ſhall be, where the Verdict is with the Right. *Sal.* 644, 646, 647.

[When the Merits have been tried fairly and fully, the Court will not grant new Trial. As if Defendant has miſtaken one Abuttal of a Way which he claims in his Plea, and yet has a Verdict. *Sampſon* v. *Appleyard*, *M.* 12 *G.* 3. 3 *Wilſ.* 272.]

[In Debt on Bond, conditioned to pay to a third Perſon *A.* if on Trial there is Evidence that *A.* declared there was nothing due to him, there ſhall not be a new Trial on Affidavit of *A.* that he looked on Defendant as indebted to Plaintiff the Obligee; for *A.* is the real Plaintiff, and his Declaration good Evidence. *Hanſon* v. *Parker*, *H.* 23 *G.* 2. 1 *Wilſ.* 257.]

Nor after an Interlocutory Judgment. *Mod. Ca.* 264.

[New Trial cannot be granted on the Crown Side, after ſigning interlocutory Judgment. *Rex* v. *Armſtrong*, *M.* 12 *G.* 2. *Str.* 1102.]

[There ſhall not be a new Trial after four Years Acquieſcence, though Judgment is not ſigned. *Rex* v. *Bill*, *M.* 8 *G.* 2. *Str.* 995.]

Nor uſually in an Action for Words. *Sal.* 644.

Or Ejectment. *Sal.* 648. [*Contra Goodtitle* v. *Clayton*, *P.* 8 *G.* 3. 4 *B. M.* 2224.]

[If Plaintiff in Ejectment moves againſt the Caſual Ejector on the *St.* 4 *G.* 2. *c.* 28. that there is Half a Year's Rent due, and no Diſtreſs, and at the Trial deſerts that, and ſets up another Title, yet, if Defendant makes Defence, there ſhall be no new Trial. *Kempton* v. *Croſs*, *P.* 8 *G.* 2. *B. R. H.* 108.]

Nor after a Motion in Arreſt of Judgment. *Sal.* 647.

Or a Trial at Bar. *R. Sal.* 650, 643. 2 *Jon.* 225. *Carth.* 507.

[After Trial at Bar, if the Evidence is doubtful, a new Trial ſhall not be granted. *Smith* v. *Parkhurſt*, *H.* 12 *G.* 2. *Andr.* 315. *Str.* 1105.

[But on a Trial at Bar on a Traverſe to the Return of *Mandamus*, a new Trial at Bar may be granted if the Verdict was againſt Evidence. *Muſgrove* v *Nevinſon*, *P.* 10 *G.* 2 *Ld. Raym.* 1358. *Str.* 584. *Smith* v. *Parkhurſt*, *H.* 12 *G.* 2. *Str.* 1105.]

[New Trial ſhall not be granted after Trial at Bar in Ejectment, unleſs Juſtice is not otherwiſe to be attained. *Smith* v. *Parkhurſt*, *H.* 12 *G.* 2. *Str.* 1105. *Andr.* 315.]

[It ſhall not be granted for Variance between the Paper-book in which Plaintiff is called *James*, and the Record in which he is rightly called *John*; or becauſe the Word *not* is omited in not regarding his Promiſes. *Mathar* v. *Brinker*, *P.* 4 *G.* 3. 2 *Wilſ.* 243.]

[Where on trying a Traverſe on a Return no Damages are given, it cannot be ſupplied by Writ of Inquiry, but there muſt be a *Venire facias de novo*. *Kynaſton* v. *Shrewſbury*, *T.* 9 *G.* 2. *Str.* 1051. *B. R. H.* 147.]

[Where Judgment, tho' regular, has been obtained by Surpriſe, the Court will ſet it aſide; but not, where regular, and no Surpriſe. *Lockwood* v. *Beaumont*, *M.* 9 *G.* 2. *B. R. H.* 157.]

[In Caſe, for maliciouſly ſuing and arreſting Plaintiff in an inferior Court, which had not Juriſdiction, and Verdict for Plaintiff, there ſhall not be new Trial, though the Declaration is faulty, in not alledging that Defendant knew the Court had not Juriſdiction. *Goſlin* v. *Wilcock*, *P.* 6 *G.* 3. 2 *Wilſ.* 302.]

[If Defendant pleads in Abatement, to which Plaintiff demurs, and Judgment of *reſpondeas ouſter*, then he pleads *nil debet*, and the Plea-roll contains nothing but the Declaration and *nil debet*, the Plea in Abatement not having been deſerted, or Judgment entered on it, this Irregularity is cured by Defendant's having accepted and paid for the Iſſue, and the Court will not grant new Trial. *Combe* v. *Pitt*, *P.* 5 *G.* 3. 3 *B. M.* 1682.]

[On two Iſſues, general Verdict, right as to one, contrary to Evidence on the other, cannot be ſevered, nor new Trial granted. *Barnes* 436.]

[New Trial refuſed, when Evidence on both Sides, tho' Ch. Juſt. who tried ſtill of Opinion that the Weight of Evidence was on the other Side. *Swain* v. *Hill*, *H.* 10 *G.* 3. 3 *Wilſ.* 45. *N. B.* Here were two Iſſues, both which muſt have gone back, and one was clearly right.]

[New Trial ſhall not be granted, becauſe of Variance between Paper-Book and the Record, the Record being right. *Barnes* 475.]

[In Treſpaſs, not guilty to Part, and Juſtification to Part, Merits on Juſtification for Plaintiff and Damages; on Not guilty, no Evidence; general Verdict not ſet aſide. *Barnes* 154.]

[On a hard Caſe on *qui tam*, where Officers of Revenue will not proſecute, the Court will not grant new Trial, tho' Verdict againſt Evidence and Judge's Direction. *Barnes* 435.]

[If Title is in Diſpute, and Verdict for Defendant, no new Trial, unleſs Revenue concerned. *Barnes* 440.]

[If Verdict for Plaintiff, and Court divided on Motion of new Trial, Plaintiff may ſign Judgment. *Barnes* 442.

[50*l.* for getting the Daughter of Plaintiff, an Alehouſe-keeper, with Child, *per quod*, *&c.* not exceſſive; and *therefore only* new Trial refuſed. *Tullidge* v. *Wade*, *P.* 9 *G.* 3. 3 *Wilſ.* 18.]

[Two hundred Pound Damages for a Blow in the Face, to Plaintiff who called Defendant Scoundrel for detaining his Turtle; not exceſſive, and new Trial refuſed. *Grey* v. *Sir Alexander Grant*, *T.* 4 *G.* 3. 2 *Wilſ.* 252.]

[A Militia-

[A Militia-colonel orders an innocent Soldier twenty Laſhes, out of Spite to the Major, who had given him a Furlough; the Court will not order new Trial, becauſe 150 *l.* is given for Damages, tho' the Man was ſcarcely hurt. *Benſon* v. *Frederick*, *H.* 6 *G.* 3. 3 *B. M.* 1845.]

[The Court will not grant new Trial for exceſſive Damages, where they depend on Circumſtances ſolely under the Cognizance of a Jury, and fit for their Deciſion; as for criminal Converſation with Plaintiff's Wife. *Wilford* v. *Berkeley*, *T.* 31 *G.* 2. 1 *B. M.* 609.]

[*N. B.* This Rule is not here extended to *Torts* in general, though ſo quoted by Lord *Camden*, in *Beardmore* v. *Carrington*, 2 *Wilſ.* 244.]

[The Court will not even grant a Rule to ſhew Cauſe for new Trial for exceſſive Damages, if the Judge who tried it ſays, tho' he thinks the Damages too large, yet he is not diſſatisfied with the Verdict; as 200 *l.* for Cuſtom-houſe Officers ſearching for prohibited Goods, and finding none, but doing no Damage. *Redſhaw* v. *Brooke*, *P.* 9 *G.* 3. 2 *Wilſ.* 405.]

[But altho' a Verdict is againſt Evidence, yet if the Action was frivolous and vexatious, and the real Damage ſmall, the Court will not grant a new Trial; which ſhould be to attain real Juſtice, not to gratify litigious Paſſions, on every Point of *ſummum jus*. *Macrow* v. *Hull*, *M.* 30 *G.* 2. 1 *B. M.* 11. *Farewell* v. *Chaffey*, *M.* 30 *G.* 2. 1 *B. M.* 3. *Burton* v. *Thompſon*, *M.* 32 *G.* 2. 2 *B. M.* 664.]

[Though Judge certifies Damages exceſſive, yet if Court think otherwiſe, they will not grant new Trial. Thus, on Action for very malicious Proſecution, on which Plaintiff had been impriſoned and tried for Felony, *Page* J. certified 50 *l.* Damages exceſſive, but the Court thought not. *Barnes* 436.]

[New Trial was never granted for exceſſive Damages in Torts, yet it might, if Damages ſuch as all Mankind would exclaim at, at firſt Bluſh. *D. per* Lord *Camden*. *Huckle* v. *Money*, *M.* 4 *G.* 3. *Beardmore* v. *Carrington*, *P.* 4 *G.* 3. 2 *Wilſ.* 205, 244.]

[Yet it is ſaid, in an Action for Words, (*Lord Gower* v. *Heath*, *T.* 13 *G.* 2. *Barnes* 445.) that for exceſſive Damages Verdicts have been frequently ſet aſide. In *Redſhaw* v. *Brooke*, *P.* 9 *G.* 3. 2 *Wilſ.* 405. it was not argued nor denied on this Ground, but becauſe *Wilmot* C. J. was not diſſatisfied with the Verdict. The ſame Doctrine is aſſerted in *Wilford* v. *Berkeley*, *T.* 31 *G.* 2. 1 *B. M.* 609. and in *Benſon* v. *Frederick*, *H.* 6 *G.* 3. 3 *B. M.* 1845. where *Aſton* J. cites *Wood* v. *Gunſton*, *Style* 466. So alſo, in *Grey* v. *Grant*, *T.* 4 *G.* 3. 2 *Wilſ.* 252. So, *Anon. M.* 7 *G.* 2. *Barnes* 436. *Chiſvers* v. *Lambert*, *M.* 8 *G.* 2. *Barnes* 229. *Yate* v. *Swaine*, *M.* 15 *G.* 2. *Barnes* 233. where Inquiry ſet aſide for exceſſive Damages, *viz.* 250 *l.* for twenty-ſix Days falſe Impriſonment. *Vide etiam Hayward* v. *Newton*, *Str.* 940. *Barker* v. *Dixie*, *Str.* 1051. *B. R. H.* 279. *Barnes* 445. and *Tullidge* v. *Wade*, 3 *Wilſ.* 18. It is ſaid *per Curiam*, in *Beardmore* v. *Carrington*, that the Court may aſſeſs Damages themſelves without Writ of Inquiry. Q. Can they do it in Treſpaſs, Treſpaſs in the Caſe where Defendant pleads Not guilty, or in any Caſe where the Demand is not certain on the Record? *Vide Comyns*, Pleader, Z. 1.]

(R. 18.) When there ſhall be a Repleader.

If an Iſſue is misjoined, or joined on an immaterial Point, *&c.* when it is not aided by the *St.* 32 *H.* 8. a Repleader ſhall be awarded. *Cro. El.* 883. *R.* 1 *Lev.* 32. 2 *Mod.* 137, 140.

[As if Plaintiff declares on a Leaſe to *A.* which he ſays is come by Aſſignment to Defendant, and he pleads that *A.* did not aſſign to him, and Iſſue is joined, there ſhall be a Repleader, for it is an immaterial Iſſue. *Enys* v. *Mohun*, *M.* 3 *G.* 2. *Str.* 847.]

[Or if a Bond is conditioned for Payment of Money, *on or before* 5th of *December*, and Defendant pleads Payment on 5th of *December*, and Plaintiff replies,

and Verdict for Plaintiff, there ſhall be a Repleader, for it is an immaterial Iſſue. *Tyron* v. *Carter*, *M.* 8 *G.* 2. *Str.* 994.]

[But altho' an Iſſue is immaterial, yet a Repleader ſhall not be granted, if the Cauſe can be ended more expeditiouſly; as if the Plea be ill, or good in Form though not in Fact, and amounts to Confeſſion. *Rex* v. *Philips*, *M.* 7 *G. Str.* 394.]

So, if the Iſſue joined is nugatory and void, whereon the Court cannot give Judgment, there ſhall be a Repleader. *R. Mod. Ca.* 2. *Hard.* 331.

[When the Finding on an Iſſue does not determine the Right, the Court ought to award Repleader, unleſs it appears from the Record, that no Manner of pleading the Matter could avail. *Rex* v. *Philips*, *P.* 30 *G.* 2. 1 *B. M.* 292.]

[If there is a Miſtake in a Plea (as if a Mayor ſets forth his being ſworn in according to the Charter, when in Fact he was ſworn in on a *Mandamus*, according to 11 *G.* 1. *c.* 4.) and ſeveral Iſſues taken by the Replication to one intire Defence, all which are found againſt Defendant, as he could not give in Evidence the true and proper Manner of his being ſworn in, on this Plea; the Court may order the whole Verdict to be ſet aſide, with Coſts, and Liberty to amend the Plea. *Ibid.*]

So, if the Iſſue is concluded to the Country, where it ſhould be to the Record, *&c.* or *è contra*. *R.* 1 *Leo.* 90.

There ſhall be a Repleader of a Bar, Replication or Rejoinder, which is bad; for at the firſt Defect the Repleader begins. *Ray.* 458.

By the Common Law, if an immaterial Iſſue was joined, the Court might award a Repleader before Trial. *Mod. Ca.* 2 *Sal.* 579.

But will not now, where the Iſſue joined will be aided by the Statutes of *Jeofaile*. *R. Mod. Ca.* 3. *Sal.* 579.

So there ſhall not be a Repleader, where the Treſpaſs is confeſſed, tho' the Iſſue was Immaterial. 1 *Sal.* 173.

And there may be a Repleader after a Verdict. *Cro. El.* 883. *Hard.* 331.

But generally there ſhall be no Repleader upon a Demurrer. 1 *Leo.* 79. without the Conſent of the Parties. *Per* 2 *J. Rol.* 271. *Mo.* 461. *Agr. Mo.* 867. *Lat.* 147. *Adm.* 2 *Lev.* 142. *Cont. allowed* 3 *Lev.* 440. *Per Powell Mod. Ca.* 102. *R. Sav.* 89. 2 *Bul.* 37.

Yet, if there be a bad Bar and a bad Replication, a Repleader may be awarded upon a Demurrer. *Bro. Replead.* 39. *But Periam ſaid, the Roll of that Caſe could not be found. R. Pl. Com.* 138. *a. But Periam ſaid, that there it was by Conſent.* 1 *Leo.* 79. *Acc. per* 3 *J. Periam cont.* 1 *Leo.* 79. *But in the ſame Caſe it is doubted. Sav.* 89. *Semb. Cro. El.* 318. 1 *And.* 167.

So there ſhall be no Repleader, where by the Defect in joining Iſſue there is a Diſcontinuance. *R. Mod. Ca.* 3.

Or the Defendant made Default at the Trial, whereby he is out of Court. *R.* 1 *Sal.* 216. 2 *Sal.* 579.

[After Inqueſt is taken by Default, Defendant cannot be received to make Suggeſtion on the Roll, for after Default there can be no Repleader. *Brampton* v. *Crabb*, *H.* 3 *G. Str.* 46.]

[In Debt on Bond, if Defendant pleads Payment before the Day under a *Scilicet*, there ſhall not be a Repleader. *Cowne* v. *Barry*, *M.* 7 *G.* 2. *Str.* 954.

[There ſhall be no Repleader where Defendant pleads Payment, and Acceptance in Satisfaction of Debt on Bond, and Plaintiff takes Iſſue on the Acceptance. *Hackſhaw* v. *Rawlings*, *H.* 3 *G. Str.* 23.]

If Iſſue be joined in *Chancery*, and the Record ſent into *B. R.* to be tried, for a Defect in the *Venire facias*, a Repleader ſhall be awarded in *B. R.* and not in *Chancery*; for the Record being in *B. R.* can never be remanded. *R.* 1 *Rol.* 287.

So antiently a Repleader was awarded upon a Writ of Error, but this is now obſolete. *Per Hale*, 2 *Sand.* 319. 2 *Lev.* 12.

If a Repleader be awarded or denied, when it ſhould not be, it will be Error. *R. Mod. Ca.* 2. *Sal.* 579.

If

If a Repleader is awarded, the Judgment is *quod replacitent*, and the freſh Pleading begins where the firſt Defect was. *R. Mod. Ca.* 2. *Sal.* 579.

There ſhall be no Coſts on a Repleader. *Ibid.*

(S) Verdict.

(S. 1.) General.

A Verdict is General or Special. *Co. Lit.* 226. *b.*

A General Verdict is, when the Jury find the Point in Iſſue generally: As, in Aſſize on *Nul Tort*, *Nul Diſſeiſin*, that the Tenant *diſſeiſivit*, or *non diſſeiſivit*. *Co. Lit.* 226. *b.*

If the Plaintiff is nonſuited, and the Jury find Damages, as in Replevin, it is no Verdict, but only an Inqueſt of Office. *R. Cro. El.* 412.

(S. 2.) Special.

A Special Verdict is, when the Jury find the ſpecial Matter, and thereupon pray the Diſcretion of the Court. *Co. Lit.* 226. *b.*

[On a Point reſerved for Opinion of Court, the Verdict muſt always be for Plaintiff. *Barnes* 455.]

[The Rule ſhould be, if the Opinion of the Court is for Plaintiff, that the *Poſtea* be delivered to him; if for Defendant, that Verdict be entered for him *ex aſſenſu Juratorum*. *Barnes* 451.]

A Special Verdict may be found in all Caſes, as well upon Indictments and Appeals, as upon Common Pleas. *Co. Lit.* 227. *a.* *R.* 9 *Co.* 13, 14. *Dowman.*

In all Actions, Real, Perſonal, or Mixt. *R.* 9 *Co.* 13, 14.

On all Iſſues joined between the King and the Subject, as well as between Party and Party. *Ibid.*

And upon any Iſſue joined on a ſpecial Matter, or Point collateral, as well as on the General Iſſue. *R. cont. Dy.* 284. *a.* *R. acc. per all the J. in B. and the Opinion in Dyer denied.* 9 *Co.* 14. *Dowman. Cont.* 3 *Leo.* 48. *R. acc. Mo.* 858.

So by Conſent a Special Verdict may be determined by the Court without being filed upon Record. *Mo.* 774.

But if the Jury find a ſpecial Matter not pertinent to the Point in Iſſue, the Court may diſallow the Verdict, and the Caſe muſt be underſtood to be ſuch in the Books, where the Court diſallows a ſpecial Verdict. 9 *Co.* 14. *a.*

As in Treſpaſs for a Thing Tranſitory in *A.* if the Defendant is found *Not Guilty in A.* for the Jury ought to ſay *Not Guilty generally*, or find the ſpecial Matter. 2 *Rol.* 694. *l.* 25.

[In a Caſe for the Opinion of the Court, the Facts proved at the Trial ought to be ſtated, and not the Evidence of the Facts only; thus, in Treſpaſs on a Copyhold, it is not enough to ſtate that Admiſſion of Plaintiff was proved, but muſt ſtate that Plaintiff had Title or Poſſeſſion. *Palmer* v. *Johnſon*, *P.* 3 *G.* 3. 2 *Wilſ.* 163.]

(S. 3.) Privy.

A Verdict ſhall be given in Court. *Co. Lit.* 227. *b.*

Or may be given privately before the Judge in all Caſes, except in Criminal Ones, which affect Life or Member. *Ibid.*

But in Criminal Caſes, which affect Life or Member, a privy Verdict ſhall not be given. *Co. Lit.* 227. *b.* *R. Ray.* 193. But in other Criminal Caſes it may. *R. ibid.*

And where a PrivyVerdict is given, if the Judge or any of the Jury die before it is affirmed, it is not good. *R. Mo.* 33.

The Jury may vary from the Privy Verdict, before it is affirmed in Court. *Co. Lit.* 227. *b.* *R. Mo.* 33. *R. Dy.* 209. *a.*

So they may vary from the first Tender of their Verdict in Court, before it is recorded. *Co. Lit.* 227. *b.*

But after the Verdict is recorded, they cannot go from it. *Ibid.*

So after a Verdict in Writing delivered to the Sheriff on an Extent, it cannot be altered, except in Form. 2 *Rol.* 712. *l.* 45.

(S. 4.) What Things a Verdict may find.

(S. 4.) Matter of Record.

The Jury may find by their Verdict all Things given in Evidence, material to the Issue, if it be not contrary to the Record, or the Admission of the Parties.

As they may find Matter of Record, given in Evidence: As, Letters Patent, Statutes, Judgments, &c. *Hob.* 227.

A Fine or Common Recovery. 2 *Rol.* 691. *l.* 23.

A Record of an Attainder produced *sub Pede Sigilli.* 2 *Rol.* 691. *l.* 20.

So any Record regularly proved. *Cont.* 2 *Rol.* 691. *l.* 20. *Hob.* 227.

So Matters upon Record in a Spiritual Court, as, a Divorce, &c. 2 *Rol.* 691. *l.* 25.

(S. 5.) An Estoppel.

So the Jury may find Matter of Estoppel, and tho' it is not pleaded and relied upon, when it is found the Court shall judge according to Law. *Co. Lit.* 227. *a.*

And therefore, if a Man makes a Lease by Indenture to *A.* of his own Land, whereby *A.* is estopped to say, that it was not demised, the Jury may find such Matter, tho' it be not pleaded. *Co. Lit.* 227. *a.* *Dub. Cro. El.* 140. *Ow.* 96. *R.* 4 *Co.* 53. *R. Cro. Car.* 110. *Vide* 1 *Leo.* 206.

And the Jury must find the *Estoppel* under Pain of an Attaint. 4 *Co.* 53. *b.*

So the Jury may find Tenure of the King by *Estoppel.* 2 *Rol.* 690. *l.* 5. 7 *H.* 4. 41. *a.*

So they may find a Bond to be made before the Date; tho' the Party is estopped from saying so. *R.* 2 *Co.* 4. *b.* 2 *Rol.* 690. *l.* 7. 706. *l.* 17.

But where the Plaintiff makes Title by *Estoppel*, or pleads and relies upon the *Estoppel*, the Jury cannot find contrary to the *Estoppel.* 1 *Sal.* 276. *Vide Estoppel*, (B.—E. 10.)

(S. 6.) A Matter which bars or avoids an Estate.

So the Jury may find a collateral Warranty; for it bars a Right. *Co. Lit.* 227. *a.* *R.* 10 *Co.* 97. *b.* 2 *Rol.* 690. *l.* 10.

So they may find a Condition, which defeats an Estate. 2 *Rol.* 690. *l.* 30, 35. *Lit. S.* 366.

Or a Release of an Estate. *Cont. per Shard.* 26 *Ass.* 2. *b.* *Acc.* 2 *Rol.* 691. *l.* 7.

Or a Confirmation, though they are without Deed.

(S. 7.) The Jury may find a special Matter, when they cannot give a general Verdict upon it.

So they may find a Matter specially for the Plaintiff, on which they could not give a general Verdict for him, without Danger of an Attaint: As, if a Man justifies by a Lease 30 *Mar. habendum* from *Lady-Day* before for a Year, and the Issue is upon the Lease, and a Lease is proved of 25 *Mar. habendum* from thenceforth for a Year, the Jury may find for the Defendant, and not safely for the Avowant; yet they may find specially, on which the Court shall give Judgment for the Avowant. *R. Hob.* 73. 2 *Rol.* 690. *l.* 45.

(S. 8.) Or give a general Verdict, when the special Matter does not warrant it.

So the Jury may find a general Verdict for the Plaintiff, where the special Matter found would be against him: As, in Trover, on Proof of a Demand and Refusal, they may find for the Plaintiff, but if it be found specially, it will be adjudged no Conversion. *Vide Action upon the Case upon Trover*, (E.)

On

On Proof of a Voluntary Feoffment to a Son, the Jury may find it fraudulent as to Creditors, &c. but if it be found ſpecially, it will not be judged ſo. *R.* 10 *Co.* 56. *b.*

Yet, if the Special Matter gives a violent Preſumption of a Fact, it ſhall be adjudged accordingly: As, if the Jury find that the Parties declared by a ſubſequent Indenture that a Recovery was ſuffered to ſuch Uſes, the Court will adjudge the Recovery to thoſe Uſes. *R.* 9 *Co.* 8. *b.* *Mo.* 192.

So, if they find a Conveyance of One, who fled beyond Sea, to Truſtees for Payment of his Debts, and that the Reſidue ſhould be at his Diſpoſal, with Power of Revocation, and that he continued in Poſſeſſion afterwards, it ſhall be adjudged fraudulent as againſt the King, tho' it be not expreſly found. *R. Mo.* 194.

(S. 9.) May find a Matter in another Place or County. When the Place is only for a *Venue*.

When the Matter of the Iſſue is alledged in any particular Place for Conformity to have a *Venue*, the Jury may find the Thing done in any other Place or County. *R.* 6 *Co.* 47. *a.* 2 *Rol.* 689. *l.* 40. *Vide Poſt*, (S. 15.)

As, if an Executor pleads *plene Adminiſtravit*, and the Plaintiff replies *Aſſets at A.* the Jury ought to find for the Plaintiff, if Aſſets at any Place within or out of the Realm are proved. *R.* 6 *Co.* 47. 2 *Cro.* 55.

So, if the Heir pleads *Nothing by Deſcent at A.* the Jury ought to find for the Plaintiff, if there are Aſſets in any other County or Place. 2 *Dy.* 271. *b.* *R.* 6 *Co.* 47. *a.* 2 *Rol.* 689. *l.* 16. *R.* 2 *Cro.* 503.

So, if there be a Feoffment with Warranty by Tenant in Tail, in *Formedon* by the Iſſue in *Norfolk*, the Jury may find Aſſets in any County. 6 *Co.* 47. *a.*

If Tender of Homage be alledged at *D.* it may be found in any other Place. 2 *Rol.* 689. *l.* 50. *Vide Poſt*, (S. 15.)

So, if the Iſſue be of a Thing done out of the Realm, it may be found by a Jury of the County where the Action is brought: As, if the Iſſue be, whether a Ship demurred at *M.* in *Spain*. *R.* 6 *Co.* 47. *b.*

And in ſuch Caſe the Jury is bound to find Matter in another County, under Pain of an Attaint. *Cont. Bro. Attaint.* 104. *R.* 6 *Co.* 47. *a. acc.*

(S. 10.) When a Local Thing is material, upon the general Iſſue.

So, on every general Iſſue, the Jury may find all Local Things, material to the Matter in Queſtion, tho' in another County. *R.* 6 *Co.* 47. *a.*

As, in an Action on the *St.* 32 *H.* 8. for buying of Titles in *N.* where the Bargain was for a Title of Land in another County, upon the general Iſſue the Jury ſhall find the Value of the Land in another County. *R.* 2 *Rol.* 688. *l.* 35.

In Aſſiſe, they ſhall find Death, &c. in another County. 2 *Rol.* 689. *l.* 5, 10.

In Ejectment, upon *Not Guilty*, if the Plaintiff makes Title by a Leaſe of Land in *A.* except the Manor of *B.* the Jury of one County may find that the Manor extends into two Counties, and that the Leſſor had Nothing in *A.* except the Manor. *R. Hob.* 170.

(S. 11.) When a Bar in a foreign County is pleaded.

So, when a Bar in a real or perſonal Action is pleaded in a foreign County: As, a Releaſe, &c. the Jury ſhall aſſeſs Damages for Land in another County, and ſo by a *Mean* ſhall inquire of a Local Thing in another County, of which they could not *Originally*. *R.* 6 *Co.* 47. *a.*

As, in Treſpaſs *Quare Clauſum fregit*, if a Releaſe, Arbitrament, &c. in another County be pleaded and tried there, the ſame Jury ſhall aſſeſs Damages for the Treſpaſs. 2 *Rol.* 687. *l.* 50.

So, if a Releaſe, &c. in a foreign County is pleaded in Aſſiſe, *Aiel*, *Coſinage*, &c. 2 *Rol.* 688. *l.* 10.

So in Waſte. 2 *Rol.* 688. *l.* 15.

So, in Treſpaſs for breaking his Cloſe, if the Defendant pleads that the Plaintiff is a *Villein regardant* to his Manor in another County. *R.* 2 *Rol.* 688. *l.* 25.

So

(S. 12.) At another Time.

So they may find a Thing to be done at another Time, when the Day is not material: As, in Treſpaſs for a Battery, &c. ſuch a Day, the Defendant may be found Guilty at another Day. 2 *Rol.* 687. *l.* 25.

So in Conſpiracy. 2 *Rol.* 687. *l.* 20.

So, in Battery, tho' the Defendant juſtifies by *ſon Aſſault* the ſame Day, by which the Day is made Parcel of the Iſſue. *R. cont.* 2 *Rol.* 680. *l.* 45. 687. *l.* 30. *R. Cont. Brownl.* 233. *R. acc. Cro. Car.* 514.

(S. 13.) When it ſhall not a Thing in another Place. In Criminal Caſes.

But in Criminal Caſes the Jury cannot find an Offence in another County than where it is alledged. 6 *Co.* 47. *b.*

As in Felony. *Ibid.*

(S. 14.) When the Place is Parcel of the Iſſue.

So, when the Place is Parcel of the Iſſue, the Jury cannot find the Point in Iſſue in another Place. *R.* 6 *Co.* 47. *a.* *D. Hob.* 170.

(S. 15.) When the Place is material.

So, in a Local Treſpaſs, the Jury cannot find the Defendant guilty in another County: As, in Treſpaſs for the Cutting of Trees, Graſs ſpoiled, &c. 2 *Rol.* 688. *l.* 50.

Nor in another Place in the ſame County. *Semb.* 2 *Rol.* 689. *l.* 35.

And if the Jury find a general Verdict for the Plaintiff, in Treſpaſs *Quare Clauſum fregit*, &c. where the Proof is of a Treſpaſs in another Place or County, an Attaint lies.

So a Jury in *Bucks* cannot find a Foundation of a Priory in *Oxon.* *R.* 2 *Rol.* 688. *l.* 52.

In an Action in an Inferior Court, the Jury cannot find a Thing iſſuable done out of the Juriſdiction. 1 *Cro.* 101. 2 *Cro.* 503. *R. inter Drake and Bear, T.* 15 *Car.* 2. *B. R.*

But a Jury in an Inferior Court may inquire of a Matter for Increaſe of Damages, tho' done out of the Juriſdiction. 1 *Cro.* 571. *Agr. inter Drake and Bear, T.* 15 *Car.* 2.

(S. 16.) So the Jury cannot find a Thing contrary to the Record.

So the Jury cannot find a Thing contrary to the Record. 2 *Rol.* 691. *l.* 30. *R.* 11 *H.* 6. 42. *a.* *R.* 9 *Co.* 69. *b.*

And if a Verdict finds Matter contrary to the Record, it is void as to that. 9 *Co.* 69. *b.*

(S. 17.) Contrary to the Matter agreed by the Parties.

So the Jury ought not to inquire of a Thing, which is agreed by the Parties to the Iſſue. 2 *Rol.* 691. *l.* 35.

As, in Dower, if the Tenant pleads, *always ready to render Dower*, and the Iſſue is whether the Huſband died ſeiſed, the Jury ſhall not inquire whether he was ſeiſed of an Eſtate of which the Wife was dowable; for this is confeſſed by the Plea. 2 *Rol.* 691. *l.* 40. 3 *Leo.* 80.

In Waſte, for Waſte in *A.* if the Defendant pleads no ſuch *Vill* as *A.* the Jury cannot inquire whether there was any Waſte committed, or whether the Plaintiff had Land in *A.* for it is confeſſed by the Plea. 2 *Rol.* 691. *l.* 45.

In Aſſiſe, if the Tenant pleads that the Demandant took the Profits *pendente Lite*, the Jury cannot find that the Tenant was not ſeiſed; for it is admitted by the Plea. 2 *Rol.* 691. *l.* 50.

So, if a Tenant juſtifies for Common, and Iſſue on the Common found for the Demandant, the Jury cannot find that the Tenant did not put in his Cattle. 2 *Rol.* 692. *l.* 5.

In Debt for Rent of four Acres, the Defendant pleads that he demiſed ſix Acres *abſque hoc* that he demiſed four only, the Jury cannot find a Demiſe of leſs than four; for it is agreed that four were demiſed. 2 *Rol.* 692. *l.* 20.

If by the Pleading it appears that there is a Manor, and the Queſtion ariſes upon the Tenure, the Jury ſhall not find Matter, which deſtroys the Manor. *R. Lut.* 1216.

If the Defendant avows for a *Heriot*, and ſhews Tenure by Fealty and 2*s.* Rent, *&c.* the Plaintiff admits the Tenure, and traverſes the Preſcription, if the Jury finds a Tenure by 12*d.* it is not material, and the Avowant ſhall have Judgment. *R.* 2 *Mod.* 5.

If he ſays that *Locus in quo, &c.* is Parcel of the Manor of *B.* which is his Freehold, and avows for *Damage feaſant* there, if the Plaintiff traverſes that the ſaid Manor is the Freehold of the Defendant, it cannot be found that there is no ſuch Manor. *R. Dy.* 183. *a.*

In a *Præcipe* againſt *A.* who pleads, and *B.* as in Reverſion prays to be received; and the Iſſue is, That *B.* had not the Reverſion in Fee, and the Jury find that neither *A. or B.* had any Thing, *B.* ſhall be received; for it is contrary to the Admiſſion of the Party, for it is admitted that *A.* is Tenant, and the Verdict imports that he is not.

(S. 18.) Out of the Iſſue.

So the Jury cannot find Matter out of the Iſſue: As, in Debt, on *No ſuch Award* pleaded, the Jury cannot find Matters, which make the Award void, if they are not contained in the Award itſelf. *R.* 2 *Rol.* 692. *l.* 25. *Vide Hob.* 54.

In Waſte the Plaintiff declares upon a Feoffment to the Uſe of the Defendant for Life, Remainder to the Plaintiff, and the Iſſue is upon the Feoffment, and found that there was a Feoffment to ſuch Uſes, the Jury ſhall not find that the Uſe to the Defendant was without Impeachment of Waſte. *R. per* 3 *J.* 3 *Leo.* 80. *Cro. El.* 40.

If a Verdict finds Matter out of the Iſſue, it is void for ſo much, tho' it concludes thereon generally, for or againſt the Plaintiff or Defendant. *Hob.* 53. *Vide Poſt*, (S. 28.)

And tho' the Matter out of the Iſſue deſtroys the Plaintiff's Title. 1 *Leo.* 66.

If the Plaintiff by Replication pleads Aſſets in a certain Manner, and the Verdict finds Aſſets generally, it will be good. *R.* 2 *Cro.* 140.

But if a Verdict does not directly conclude to the Point in Iſſue, yet it is good, if the Court can collect the Point in Iſſue out of the Verdict. *Hob.* 54.

As, if the Iſſue be that the Tenant has the *Fee*, Verdict, that he has Nothing, is good, for it denotes that he has not the *Fee*. *Hob.* 54.

(S. 19.) And a Verdict ſhall be void.

(S. 19.) If it finds only Part of the Iſſue.

So a Verdict is inſufficient for the Whole, if it finds only Part of the Iſſue and ſays Nothing to the Reſidue: As, in an Information for Intruſion into a Houſe and 100 Acres of Land, if the Verdict finds againſt the Defendant for the Land, but ſays Nothing as to the Houſe, it is void for the Whole. *Co. Lit.* 227. *a.* *R.* 2 *Leo.* 196.

[If in Debt for 500*l.* on a Charter-party to pay 50 Guineas *per* Month, Defendant pleads he paid 50 Guineas *per* Month for all the Time, and Iſſue taken that he did not, and Jury find that 357*l.* remains unpaid, and ſay Nothing of the Reſt of the 500*l.* the Verdict is void. *Hooper* v. *Shepherd*, *P.* 11 *G.* 2. *Str.* 1089. *Andr.* 156.]

In Treſpaſs for breaking his Cloſe, and beating his Servant, if it ſays Nothing to the Battery. *R.* 3 *Leo.* 83.

In Treſpaſs againſt Husband and Wife for beating his Horſe and other Treſpaſſes, a Verdict, that the Wife beat the Horſe, and for the Reſidue *Not guilty*, but ſays Nothing as to the Husband whether he beat the Horſe or not, is bad. *R. Yel.* 106.

In Debt for 7*l.* if it finds *Nil debet* for 6*l.* and Nothing for the Reſidue. *R. Cro. El.* 133.

In Treſpaſs for a Gown and Manteau, if Nothing found for the Manteau. *R.* 3 *Lev.* 55.

In Waſte in pulling down, Selling and Deſtroying of Houſes, *&c.* if Nothing found as to the Sale. 1 *Lev.* 309.

So, in an Action againſt three, who plead ſeverally, if three ſeveral Iſſues are joined, and there is a Verdict on two Iſſues only, but Nothing is ſaid as to the third Iſſue, it is void for the Whole. *R.* 2 *Rol.* 722. *l.* 5.

In an Action by Husband and Wife for a Battery of both, if on *Not guilty*, the Defendant is found Guilty for the Battery of the Wife, but Nothing is ſaid as to the Battery of the Husband. *R. Hard.* 166.

Yet in Treſpaſs for Battery and Wounding, and Not guilty to the Wounding and Juſtification to the Reſidue, if it finds that he beat and wounded of his own Wrong, but ſays Nothing to the Iſſue on the *Not guilty*, it is good. *R. Cro. El.* 854.

So, in Prohibition, if it finds the Cuſtom, *&c.* for the Defendant, but ſays Nothing as to the Proceeding after the Prohibition delivered. *R.* 2 *Mod. Ca.* 3.

But it may find Part of the Iſſue for the Plaintiff and Part for the Defendant. *Vide Poſt*, (S. 26.)

Tho' the Iſſue is entire: As, in a Writ of Error to reverſe a Fine by him in Remainder after an Eſtate Tail, if the Defendant pleads a Common Recovery in Bar and there is Iſſue thereon, and the Recovery is found of Part of the Land, it is for the Plaintiff for Part, but the Defendant may proceed in Error to reverſe the Fine for the Reſidue. *R.* 2 *Rol.* 711. *l.* 30.

In Debt on a penal Bill for 300*l.* on *Nil debet* it may find for 100*l. debet*, for 200*l. Nil debet*. *R. Sal.* 664.

[If in a ſpecial Verdict, Aſſets are found intire, and if the Penalty of three Bonds are Charges on the Aſſets, then for Defendant, if not Charges, then for Plaintiff, and the Court thinks the Penalty of two Bonds are Charges, and of the Third, not; Judgment may be entred thereon, *quia videtur cur. &c.* accordingly. *Bank of England* v. *Morice*, *H.* 9 *G.* 2. *Str.* 1028. *B. R. H.* 219.]

So, if it finds Words, which imply the whole Iſſue, it is ſufficient, tho' Part of the Iſſue is not expreſſly found: As, in Treſpaſs for Aſſault and Battery, if it finds the Defendant Guilty of the Treſpaſs and Aſſault, and ſays Nothing to the Battery; for *Treſpaſs* implies it. *R.* 2 *Lev.* 111. *Cro. El.* 854. *Vide ſupra.*

So, in an Information for forging and publiſhing a Deed, if it finds the Defendant Guilty of the Treſpaſs and Forgery *prædict'*, but ſays Nothing to the publiſhing, for the Word *Treſpaſs* implies it. *R.* 2 *Lev.* 111.

[If a Man is indicted for forging a Bond, for publiſhing *ſuch* Bond, and for publiſhing a *certain Bond*, knowing it to be forged, and the Jury find a ſpecial Verdict that he forged a Bond, and publiſhed the ſame, and ſay no more, the Court will ſupply what the Jury ought to have done, and find him guilty of the two firſt Offences, and Not guilty of the Third. *Rex* v. *Hayes*, *T.* 3 *G.* 2. *Str.* 843. *Ld. Raym.* 1518.]

So the Jury cannot find a Part only of a Deed or Will, but muſt find the Whole, otherwiſe the Verdict is void for the Whole. *Vau.* 84.

[But if ſeveral Pleas go each to the Whole, if one of them be found for the Defendant, he ſhall have a general Verdict, and the Jury need take no Notice of the other. *Barber* v. *Dixon*, *H.* 17 *G.* 2. *Wilſ.* 44.]

(S. 20.) If it be imperfect. *When the Imperfection ſhall be aided by Intendment, Vide Poſt*, (S. 31) *When by ſpecial Concluſion, Vide Poſt*, (S. 35.)

So a Verdict is void which finds the Matter ſo imperfectly, that there does not appear a good Title for the Plaintiff: As, in Aſſiſe for Rent, if the Jury find a Demand and Refuſal, *et ſic diſſeiſivit*, but do not find a Demand upon the Land, it is void; for other Demand is not a Diſſeiſin. *R.* 2 *Rol.* 693. *l.* 45. 696. *l.* 40.

If the Jury find a Deviſe till the Heir pays ſo much, but do not find whether the Heir has paid or not. *R.* 2 *Rol.* 698. *l.* 40.

If it finds that *A.* had two Sons *B.* and *C.* (and who was Heir is the Queſtion) if it does not find which is the eldeſt Son, it is void; for it ſhall not be intended that *B.* being named firſt is the Elder. *R.* 2 *Rol.* 699. *l.* 15. *Cro. cont. Cro. Car.* 392.

If it finds that the Leſſor of the Plaintiff entred and leaſed to the Plaintiff, who was ouſted by the Defendant, but does not find any Title in the Plaintiff. *Semb.* 2 *Rol.* 699. *l.* 40.

If it finds a Leaſe from a College, and Entry by the Bailiff for a Condition broken, but does not find an Authority to enter by Deed. *R.* 2 *Rol.* 699. *l.* 50.

If

If it finds a ſpecial Title in *A.* and that *B.* entred and leaſed to the Plaintiff, and if *A.* has Title, for the Plaintiff, *&c.* but does not find that *B.* diſſeiſed *A.* ſo that his Entry and Leaſe is void; for it ſhall not be intended that *B.* entred by *Diſſeiſin.* 2 *Rol.* 700. *l.* 5.

If it finds that 100 Acres of Wood in the Declaration are Parcel of a Farm, which Farm was demiſed to the Plaintiff by Indenture *prout*, and the Indenture ſhews a Demiſe of the whole Farm, *except Coppice*, but does not find there was any Coppice on the Farm, or that the Wood in the Declaration was Coppice, it is not ſufficient to bring the Matter intended by the Exception in Queſtion, but it is a ſufficient Verdict for the Plaintiff. *R.* 2 *Rol.* 700 *l.* 15.

If it finds a Deviſe on a Condition precedent, but don't find the Condition performed. *R.* 2 *Rol.* 700. *l.* 50.

If it finds a Feoffment by a Father, who is Tenant for Life, with Remainder to *B.* his Son, with Warranty to the Plaintiff, and that *B.* is his only Son by ſuch a Wife, but does not find that he is his Son and Heir, and then the Warranty will not deſcend upon him; and it ſhall not be intended, for he might have another Son by another Wife. *R.* 2 *Rol.* 701. *l.* 10. *Cro. Car.* 391.

In *Aſſumpſit* to pay on Requeſt, if it finds that he undertook, but does not ſay *Modo et Forma*, nor finds any Requeſt. *R.* 2 *Rol.* 711. *l.* 45.

If it finds a Deviſe, and does not ſay that the Deviſor is dead. *R.* 2 *Leo.* 120.

If a Verdict finds that *Julian* Wife of *B.* is dead, when the Iſſue is whether *Jemmett* Wife of *B.* is dead, and does not ſay that *Julian* and *Jemmet* are the ſame Name. *R. Mo.* 411.

If, in an Information for Uſury, it finds *Quod corrupt' agreat' fuit*, but does not find the Loan. *R.* 2 *Cro.* 210.

So, if the Verdict does not expreſsly find Matter neceſſary to maintain the Action, it is imperfect. *R.* 2 *Jon.* 61.

As, if it finds an Entry but no Expulſion. *Poph.* 12.

So, if it finds Matter ſpecially, and finds an Entry by the Defendant on the Plaintiff, and then makes a general Concluſion, without finding Title in the Defendant, or Poſſeſſion, there ſhall be Judgment for the Plaintiff, without Regard to the ſpecial Matter. *R. Cro. El.* 438.

So, if a Verdict does not find Damages and Coſts, it is imperfect: As, in Annuity. *R.* 11 *Co.* 56. *a.* 2 *Rol.* 722. *l.* 30.

Or finds intire Damages when it ought not; for inſufficient Damages are, as none. 11 *Co.* 56. *a.*

So, in Detinue, if it does not find the Value, as it ought. 10 *Co.* 119. *b.*

Or in *Valore Maritagii* does not find the Value of the Marriage. *R.* 10 *Co.* 119. *a.* 2 *Rol.* 722. *l.* 10.

But the Omiſſion of finding Damages and Coſts will be aided by a Releaſe of them. *R.* 11 *Co.* 56. *a.*

So an Omiſſion of that, which the Court *Ex officio* ſhall inquire of, will be aided by a Writ of Inquiry. 10 *Co.* 119. *a.*

If there are ſeveral Iſſues, and a Verdict good as to one, and imperfect as to others, a *Venire facias* goes to all. *R.* 2 *Rol.* 722. *l.* 45.

So, in an Action againſt ſeveral, if the Verdict is good as to ſome, imperfect as to others, there ſhall be a *Venire facias de novo* as to all, and a Defendant found Not Guilty, may afterwards be found Guilty. *R.* 2 *Rol.* 722. *l.* 35. 2 *Cro.* 627.

So, if there be a Demurrer to Part, and Iſſue for Part, and the Verdict does not find Damages for the Matter in the Demurrer, it is wholly void. *Dub.* 2 *Rol.* 723. *l.* 5. But it may be aided by a Releaſe of Damages on the Demurrer, or a *Non Pros.* *R.* 1 *Sal.* 346.

So if a Verdict be imperfect, it ſhall not be rectified by the ſame Jury. but a *Venire de novo* muſt iſſue. *R.* 2 *Cro.* 210.

[If it appears on the Face of the *Jurata*, that the Cauſe was tried after the Day of *Niſi Prius* mentioned therein, there muſt be a *venire Facias de novo* awarded, for the

the *Hab. Corpora* and *Jurata* cannot in this Caſe be amended. *Crowder* v. *Rooke*, T. 2 G. 3. 2 *Wilſ.* 144.]

[Wherever Attaint would lie, Writ of Inquiry cannot be awarded to aſſeſs Damages, but *Venire de novo* muſt go; ſo if Iſſue is joined in Abatement, and Verdict for Plaintiff. *Eichorn* v. *Lemaitre*, H. 8 G. 3. 2 *Wilſ.* 367.]

[In Debt for the Penalty of 500 *l.* on Articles not to cut Trees, *&c.* on Penalty, *&c.* if there is Verdict for Plaintiff, that Defendant owes the Debt and one Shilling Damages, a *Venire facias de novo* ſhall go, for Jury ſhould have aſſeſſed the real Damages on the Breaches aſſigned, and Plaintiff cannot take Verdict for the whole Debt by 8 & 9 *W.* 3. *c.* 10. *Drage* v. *Brand*, P. 8 G. 3. 2 *Wilſ.* 377.]

[On *Riens per deſcent*, Verdict, "that there are Lands ſufficient" good, tho' the Value not ſet out. *Barnes* 444.]

1.) If it be uncertain.

So an uncertain Verdict is void: As, in Debt againſt an Executor, who pleads *Plene adminiſtravit*, if the Jury find he has Goods in his Hands unadminiſtred, and do not ſay to what Value. *Co. Lit.* 227. *a.*

For it muſt find the Fact clear to a common Intent. *Vau.* 75.

In *Valore Maritagii*, if it finds the Marriage of the Heir, and does not ſay by whom. *R.* 9 *Co.* 74. *a.*

If it finds the *St.* 27 *Eliz.* for making void fraudulent Conveyances, and does not find the Conveyance fraudulent; for it does not bring it within the Statute. *R.* 10 *Co.* 57. *a.*

In Dower, on *nunques ſeiſie que Dower*, if it finds that the Huſband was ſeiſed of ſo much as *B.* has, and does not ſay how much. *R.* 2 *Rol.* 694. *l.* 30.

In Ejectment, if it finds the Defendant Guilty of eight Pieces of Land, without other Certainty. *R.* 2 *Rol.* 694. *l.* 50. *Vide Sav.* 35.

In an Action on a penal Statute, which gives a Penalty for every Offence, if it finds the Defendant Guilty contrary to the Statute, but does not ſay how often he is Guilty. *R.* 2 *Rol.* 696. *l.* 5.

In Account againſt *A.* as Receiver of 10 *l.* by the Hands of *B.* other 10 by the Hands of *D.* if it finds that he received only one 10 *l.* but does not ſay by whoſe Hands. *R.* 2 *Rol.* 698. *l.* 5.

If it finds that there was a Demand for Rent due at *Lady-Day*, and does not ſay for a Year or half a Year then ended. *R. per* 3 *J. Windh. cont. Sav.* 122.

If it finds *A.* his only Daughter, it is not ſufficient without ſaying that She was his Heir. *R.* 3 *Lev.* 125.

In Ejectment, if it finds the Defendant Not Guilty for four Cloſes, containing 400 Acres, and finds ſpecially for the Reſidue, and it does not appear how much the Reſidue was. *R.* 2 *Cro.* 113.

[If there are four different Demiſes in Ejectment, and a Verdict for Plaintiff that he recover his Term aforeſaid, without ſaying which, it is void. *Lady Caſs* v. *Title*. H. 12 G. *Str.* 682.]

So, if Debt be for 40 *l.* on ſeveral Contracts, and a Verdict as to 30 *l. Quod debet*, as to 10 *l. Quod Nil debet*, but it does not ſay on which Contract it finds for the Plaintiff, on which not. *R.* 2 *Rol.* 270.

So, if it finds Damages uncertainly: As, in *Aſſumpſit* if it finds Damages 40 *l.* if the Law wills that they ſhould give 40 *l.* but if the Law wills not, then 3 *l.* *R.* 2 *Rol.* 695. *l.* 50.

So, if it be uncertain for what Thing or Time the Damages are given. *R.* 2 *Sand.* 171.

Yet they may give leſs or greater Damages on a Contingency, and refer it to the Court.

So on a Covenant to pay 11 *l.* for every Acre of Land leſs than was alledged on a Purchaſe, and Breach aſſigned that there were ſo many Acres leſs as amounted to 700 *l.* the Jury find that there were ſo many, *&c.* and give 400 *l.* Damages, it will be good, tho' they find all the Acres wanting, *&c.* for they are Chancellors, and may mitigate Damages. *R.* 2 *Rol.* 703. *l.* 10.

So a Verdict, which finds the Matter in Iſſue only by Argument and Inference, is void: As, if the Iſſue be, that a Copyhold granted for three Lives is heriotable, and the Jury find that there never was any ſuch Grant in that Manor; for it is not found directly that it is not heriotable, but only by Argument. *R.* 2 *Rol.* 693. *l.* 10. (S. 22.) If it be only Argumentative.

So, on an Iſſue that by the Cuſtom a Grant may be to three for the Lives of two, a Verdict, that a Grant for three Lives is good, will be void; for it does not find the Iſſue but upon the Inference, that the Grant of a leſs Eſtate is good where the Cuſtom warrants a greater Eſtate. *R.* 2 *Rol.* 693. *l.* 15.

If the Iſſue be, whether a Copyhold may by Cuſtom be granted in Tail, a Verdict, that it may be granted in Fee, is void. *Per Hought.* 2 *Rol.* 693. *l.* 20.

In Debt, on a ſpecial *Non eſt Factum*, for that the Bond was read as an Acquittance, Verdict, that he is lettered, and knew it to be a Bond, and gave it voluntarily, is not good; for it ought to find directly, that it is his Deed. 2 *Rol.* 693. *l.* 25.

So, if the Defendant pleads *ſolvit*, and Iſſue is thereon, Verdict, that the Defendant owes the Money, is not good, for it finds only by Argument *quod non ſolvit*. *R.* 2 *Rol.* 693. *l.* 32.

So, in Treſpaſs for taking and cutting his Leather, the Defendant juſtifies as a Searcher, *&c.* and that he in ſearching it cut it *More Scrutator'*, the Plaintiff replies, Of his own Wrong *abſque hoc* that he cut it *More Scrutator*,' Verdict that he cut it of his own Wrong is not good; for it does not find the Iſſue but by Argument. *R.* 2 *Rol.* 694. *l.* 10.

If the Iſſue is, whether the Tenure be of *B.* Verdict, that he holds of *C.* is not ſufficient. *R.* 1 *Lev* 210.

In *Aſſumpſit*, if the Verdict finds that the Plaintiff has Damage by Non-performance of the Promiſe, it is not good. *R. Yel.* 77.

In Trover, on *Not Guilty*, if it finds that the Defendant converted the Goods to his own Uſe, it is not good, tho' *tantamount* to *Not Guilty*. *R. Cro. El.* 866.

So, in all Caſes, a General Verdict, which finds the Point in Iſſue by Way of Argument, is void, tho' the Argument or Inference is neceſſary. *Vau.* 75.

So, if it be repugnant: As, if in Ejectment for 20 Acres the Jury find a Demiſe for 10 Acres only, and if the Court are of Opinion that this is a Demiſe of 20 Acres, then, *&c.* it is repugnant, and void for the Whole. *R.* 2 *Rol.* 695. *l.* 30. (S. 23.) If it be repugnant.

If it finds that *A.* was ſeiſed till 1 *Feb.* and that a Writ of Entry was ſued againſt *B.* and *C. tunc tenent'*, returnable 23 *Jan.* to the Intent to ſuffer a Recovery, here no Tenant to the *Præcipe* is found; for if *A.* was ſeiſed till 1 *Feb.* it will be repugnant that *B.* and *C.* could be *tunc tenent'*; and therefore it is void for the Whole. *Per Hob. but the other J. cont. Hob.* 262.

In Appeal, if the Verdict finds the Defendant Not Guilty of Homicide and Felony, and then finds him Guilty *ſe defendendo*. 1 *And.* 41.

On an Indictment for a Riot, if it finds the Defendant Guilty of the Fact, and Not Guilty of a Riot. 3 *Mod.* 72.

[If there is a Verdict for Defendant, when by his own ſhewing he is Guilty; as if he juſtifies under a Diſtreſs for Rent, and ſhews, that the Appraiſers were ſworn by the *Headborough*, when there was a Conſtable preſent. *Broome* v. *Rice*, T. 4 G. 2. *Str.* 873.]

But if the Thing, which makes the Repugnancy, may be rejected as Surpluſage, it is good. *Vide Poſt*, (S. 28.)

So, in an Action on the Caſe for diſturbing his Common by digging Turf and a Fiſhpond, the Defendant pleads that he left ſufficient Common, Verdict, that by digging Turf he has not left ſufficient Common, that by the Fiſhpond he has left ſufficient, and ſo finds that the Plaintiff has ſufficient Common, and has not, yet it is good, for it is in different Reſpects. *Dub. Cro. Car.* 495.

(S. 24.) If it be variant from the Declaration.

So, if there be a material Variation between the Verdict and the Declaration: As, in Debt upon a Contract, if the Verdict finds a different Contract. 2 *Rol.* 702. *l.* 20. *usq;* 45.

In Detinue of a Bond, *&c.* if it finds a different Bond. 2 *Rol.* 703. *l.* 30.

In *Assumpsit*, if it finds a different Promise. 2 *Rol.* 703. *l.* 35. 719. *l.* 5, 10, 50.

In an Action on the Case for Slander, if it find Words materially different, tho' of the same Sense, or equally slanderous: As, if the Declaration be, *He is a Bankrupt*, Verdict. *He will be.* 2 *Rol.* 717. *l.* 45.

Or, if the Declaration be, *He is a Thief*, Verdict, *He stole a Horse.* 2 *Rol.* 717. *l.* 50.

Declaration in the second Person, *Thou stolest, &c.* Verdict in the third, *he stole. R.* 2 *Rol.* 718. *l.* 10.

So, in Ejectment, if it finds a different Lease. 2 *Rol.* 704. *l.* 35, 719. *l.* 32. *ad* 50. *Hob.* 73. *Lat.* 93. *Hard* 330. 2 *Lev.* 140. And *Vide ibidem*, what Leases are variant.

So in Wast for cutting down Trees, Verdict, that he dug up. 2 *Rol.* 720. *l.* 10.

[The *et similiter* left out in Issue delivered, though inserted in Record, is fatal. *Barnes* 475.]

[*He the said indorsed*, in Issue, *he the said A. indorsed*, in Record, fatal. *Barnes* 476.]

But a small or immaterial Variation does not avoid the Verdict. *Vide Post*, (S. 30.)

[And if the Record of *nisi prius* agrees with the Declaration delivered, a Variation from the Issue delivered is not material. *Shepley* v. *Marsh*, *P.* 13 *G.* 2. *Str.* 1131.]

[If the Record of *Nisi Prius* agrees with the Roll, though not with Paper-Book of the Issue, Verdict shall not be set aside; and if the Record of *Nisi Prius* is wrong, the Court will amend it by the Roll, after a Verdict on Defence made. *Leeman* v. *Allen*, *P.* 3 *G.* 3. 2 *Wils.* 160.]

(S. 25.) Or gives Damages for a Thing not incurred.

So a Verdict shall be void, if it gives Damages for that, for which no Cause of Action was then incurred: As, in an Action upon the Case for seducing his Apprentice *per quod* he lost his Service, for the Residue of the Term, which is not yet expired, for he may afterwards return and serve. *R.* 2 *Sand.* 169. 1 *Lev.* 299.

So, in an Action on the Case for building a Mill 3 *Aug. per quod* a Close was overflown, *et totum Proficuum a* 2 *Jul amisit*, if the Jury give intire Damages. *R. Sal.* 663.

But in Covenant, if the Plaintiff assigns a Breach for that the House *fuit et adhuc tenebros' existit* the Damages shall not be intended for any Thing after the Action brought. *R.* 3 *Lev.* 246, 346.

(S. 26.) But a Verdict is sufficient.

(S. 26.) If it finds the Substance of the Issue.

But it is sufficient, if the Substance of the Issue is found. *Co. Lit.* 227. *a.*

As, in an Issue, if *A.* be Joint-Tenant with *B.* if the Jury find that *A.* has Nothing, it is against him; for he cannot be a Joint-Tenant if he has Nothing. 2 *Rol.* 705. *l.* 40, 50.

In Trespas in *Middlesex*, the Defendant justifies by a Writ in *London*, the Plaintiff replies that he took in *Middlesex* of his own Wrong without such Cause, if it finds that he took by Writ in *Middlesex*, it is sufficient, for the Effect of the Issue was upon the Place. 2 *Rol.* 706. *l.* 2.

In *Audita Querela* upon Payment after Execution, and Issue thereon, if it finds a Payment before, it is sufficient, for Payment was the Substance, and the Time not material. *R.* 2 *Rol.* 706. *l.* 15.

On

On an Iſſue, if taken by *Ca. Sa.* if it finds a Taking by an *alias Capias*, it is ſufficient. *R. Hob.* 54. 2 *Rol.* 707. *l.* 10. *and many Caſes ibid.* 708, 709, 711. *Mo.* 858.

In Ejectment a Leaſe of a Manor is pleaded, whereof the Tenements in which are Parcel, and Iſſue *an demiſit Maner'*: If it finds that he demiſed a Farm, called the Manor, whereof the Tenements, in which are Parcel, and that there are Copyholds but no Freeholds there, tho' this is not a Manor in Law, yet it is ſufficient; for the Subſtance is, a Demiſe or not. *R.* 6 *Co.* 67. 2 *Rol.* 712. *l.* 5.

[In Ejectment for a *Moiety*, as one of two Coheirs, a Verdict for a third Part, Plaintiff appearing to be one of three Coheirs, is good; for Plaintiff muſt recover according to his Title. *Denn* v. *Purvis*, *P.* 30 *G.* 2. 1 *B. M.* 326.]

Iſſue, whether *A.* was in the Realm 1 *Aug.* 3 *Car.* and remained five Years without Entry or Claim to avoid a Fine, if it finds he was 4 *Car.* and not 3 *Car.* it is ſufficient, for the Time is not material, if he was five Years without Claim. *R.* 2 *R.* 713. *l.* 10.

Iſſue in Treſpaſs, whether the Land was the Freehold of *A.* if it finds that as to two Parts it was the Plaintiff's Freehold, and the other Part *A.*'s, it is ſufficient; for it finds as much as proves the Action not maintainable. *R. Cro. El.* 157.

In Prohibition, it was ſuggeſted that a *Modus* of 4 *s. Time whereof, &c.* was paid, and Iſſue upon the *Modus*, and it was found by the Verdict that there was a *Modus* of 4 *s.* 6 *d. R.* that the Defendant ſhall not have a Conſultation, for a *Modus* is found, tho' it is not the ſame as was ſuggeſted. *Cro. El.* 819.

So, it is ſufficient, if it does not find the Words of the Iſſue, but Words *tantamount*: As, if the Iſſue be, whether the Plaintiff *habuit et gaviſus fuit Officium prædictum*, Verdict, *quod occupavit*, is ſufficient. *R. Mo.* 401.

[Indictment, that Defendant *fabricavit et contrafecit* a Bank-note for 520 *l.* Verdict, that he *eraſet et alteravit* a Note by turning the Word two into five, held good, and Judgment againſt Defendant. *Rex* v. *Dawſon*, *M.* 3 *G. Str.* 19.]

So, it is ſufficient, if it finds ſo much of the Iſſue as maintains or avoids the Bar, tho' it does not find all the Words of the Iſſue: As, if the Obligor pleads *ſolvit ad Diem*, the Plaintiff replies that the Defendant, nor *A.* and *B.* joint Obligors, *nec eorum aliquis ſolvit*, and Iſſue thereon, if it finds that the Obligor *Non ſolvit*, it is ſufficient. *R. Cro. Car.* 6, 7.

[If a ſpecial Verdict on a *Mandamus* finds that Plaintiff was choſen a Jurat, then choſen Mayor, received the Sacrament within a Year before choſen Mayor, but not before choſen Jurat, it is good, though it does not find that there was no Proſecution. *Martin* v. *Jenkin*, *M.* 14 *G.* 2. *Str.* 1145.]

So, it is ſufficient if it finds the Defendant Guilty for Part only of the Demand or Charge in the Declaration: As, in Treſpaſs, if it finds him Guilty for Part only of the Treſpaſs alledged. *Vide* 2 *Rol.* 683. *l.* 20. 703. *l.* 25. 704. *l.* 5, 10. *Vide Ante*, (S. 19.)

[To Treſpaſs *Vi et Armis* for Aſſault and Battery, charging ſpecial Damages, Defendant pleads as to the *Vi et Armis* Not guilty, and Iſſue is joined, and as to the ſpecial Damages pleads *ſon aſſault demeſne*;" Plaintiff replies, " *de Injuria ſua propria abſque tali Cauſa*," and Iſſue is joined; Verdict " guilty of the Treſpaſs within-written" is good. *Hawks* v. *Crofton*, *M.* 32 *G.* 2. 2 *B. M.* 698.]

In Ejectmant, if it finds him Guilty only for Part of the Lands or Tenements demiſed. *R.* 2 *Rol.* 703. *l.* 40. *Cro. El.* 13. 3 *Lev.* 334.

So, in an Action upon the Caſe, for putting in Cattle and conſuming his Common, if he is found Guilty only for depaſturing the Common, and not Guilty for putting in the Cattle. *R.* 9 *Co.* 112. 2 *Rol.* 704. *l.* 15.

So, in an Information upon a penal Statute, if it finds only one Defendant Guilty, or only in Part. *R.* 2 *Rol.* 707. *l.* 30, 50, 708. *l.* 5. *Cro. El.* 835.

So, in an Action for Words, *you ſtole my Horſe*, and another Count for charging with Felony, if it finds that he did not charge with Felony, but finds the Words, it is ſufficient as to them. *R.* 2 *Rol.* 710. *l.* 5.

So,

So, in Account, the Defendant pleads to Part Bailiff to the Plaintiff and a Stranger, if it finds him Bailiff to the Plaintiff for ſo much, without more, it is ſufficient. *R. Mo.* 548.

Otherwiſe, if the Declaration is upon an intire Contract, Promiſe, &c. for then, if it finds againſt the Defendant for Part, it is a material Variation. *R.* 2 *Rol.* 702. *l.* 20 *ad* 45. 707. *l.* 55.

[If there is enough found, on ſeveral Iſſues joined, for Court to give Judgment on, there ſhall be no new *Venire*, though on one Iſſue no Proof nor Verdict. *Barnes* 461.]

(S. 27.) Or omits a Thing not material.

So, omitting to find a Thing not material does not avoid the Verdict: As, if it finds that *A* was ſeiſed and deviſed to *B.* paying Debts and Legacies, and refers to the Court what Eſtate paſſed, it is not material, tho' it does not find whether *B.* has paid the Debts and Legacies; for it is a Condition rather than a Limitation. *R.* 2 *Rol.* 699. *l.* 5.

So, in Debt for 750 *l.* upon a Bond *pro ſeptuagent' & quinquagint' Libris*, if the Jury finds that the Defendant made the Bond, it is ſufficient, without finding that it was intended for 750 *l.* *R. Hob.* 116.

So in Treſpaſs, or *Reſcous*, if the Defendant alledges that *A. tenuit* by Rent and Heriot-Service, and juſtifies for a Heriot, it is ſufficient, if it finds a Tenure by Heriot-Service, tho' not for the ſame Rent. *Semb. Cro. El.* 799.

Otherwiſe in Replevin, for the Avowant ought to prove the Tenure alledged. *R. Cro. El.* 799.

(S. 28.) Surpluſage does not avoid it.

And Surpluſage ſhall not hurt: As, if the Jury find a direct Verdict for the Plaintiff or Defendant, and then add uncertain or contradictory Matter. *Vide ſeveral Caſes.* 2 *Rol.* 695. *l.* 5, 15, 35. 1 *Leo.* 92. *R. Mo.* 431. *R. Cro. El.* 480. *R. Cro. Car.* 76, 130, 174. *R.* 2 *Sand.* 308. *Sav.* 112. *Vide Poſt*, (S. 40.)

As, upon a *Non eſt factum*, if it finds that it was his Deed, but delivered after the Date. 2 *Rol.* 706. *l.* 17.

If the Iſſue be, whether *A.* and *B.* enfeoffed, if it finds that *A.* and *B.* did not enfeoff, but that *A.* alone enfeoffed, the laſt Clauſe is void. 2 *Rol.* 706. *l.* 25.

Verdict, that an Executor *adminiſtravit vel ad Uſum proprium diſpoſuit*, is good, tho' in the Disjunctive, and one Way had been ſufficient. *R. Hob.* 49.

If it finds the Preſcription alledged, it is good, tho' it finds more. *R. Hob.* 117. *R.* 2 *Lev.* 253. *Mod. Ca.* 4.

If it finds a Demiſe for Life upon the Land, but no other Livery. *R. Cro. El.* 482.

Or, *quod A.* 10 *Jun.* demiſit *habendum a Die dat'*, and Livery 23 *Jul.* this being repugnant ſhall be rejected. *R.* 2 *Cro.* 153.

So, in Ejectment for twelve Acres of Land, if the Defendant is found Guilty for twenty, the Plaintiff ſhall have Judgment for twelve. *R.* 2 *Rol.* 707. *l.* 5.

In an Action againſt Huſband and Wife for Words by the Wife, if it is found that the Huſband and Wife ſpoke, it ſhall be Surpluſage as to the Huſband, and a good Verdict againſt the Wife. *R.* 1 *Rol.* 216. *R.* 2 *Rol.* 433.

So, if the Jury find that the Defendant committed Waſt and ſold, and then find the Particulars of the Waſt but no Sale, the firſt Part being only the Title of the Verdict ſhall be rejected as Surpluſage. *R.* 2 *Sand.* 255.

So, if it finds ſo much for Damages, *to be paid in Dying if it can be*, the laſt Words ſhall be rejected. *R. Cro. Car.* 219.

So, if it finds the Matter in Iſſue and other Matter out of the Iſſue, which makes *contra*. *Vide Ante*, (S. 18.)

So, if Tenant by *Receipt* pleads that *A.* was ſeiſed for Life, Reverſion to him, the Demandant replies that *A.* was ſeiſed in Fee, and Iſſue thereon, a Verdict, that *A.* had Nothing in the Land, nor the other in Reverſion, is for the Tenant by *Receipt*, for it is found that *A.* had not the Fee, and the other is Surpluſage. 1 *Rol.* 705. *l.* 40, 50. 3 *Leo.* 80.

So, on an Indictment for Barretry, if the Jury find the Defendant Guilty *prout Sir T. F. verſus eum queritur*, where the Indictment was found at the Aſſiſes and *Sir T. F.* only joined Iſſue for the King as the King's *Coronator et Attorn' in B. R.* it will be good, and *prout Sir T. F. verſus eum queritur* rejected as Surpluſage. *R.* 2 *Sand.* 308.

(S. 29.) Except where it tends to the Prejudice of the Party.

But when the Surpluſage tends to the Prejudice of the Parties, it is bad: As, in Treſpaſs for Aſſault, Battery and Wounding, the Defendant juſtifies the Aſſault and Battery, and Iſſue is thereon, the Jury find the Defendant Guilty for the Aſſault, Battery and Wounding, and give intire Damages, it is bad; for Damages are given for the Wounding, which was not in Iſſue. *R. per* 3 *J. Wind. cont.* 1 *Sid.* 96.

(S. 30.) Nor a ſmall Variation. *Vide Ante*, (S. 24.)

Nor a ſmall Addition or Variation: As, if the Declaration be of Land in *Spreton and Begley*, and the Verdict of Land in *Spriton* and *North Begley*. *R.* 1 *Sid.* 27.

In *Aſſumpſit*, if the Jury aſſeſs Damages *Occaſione Debiti prædicti*, where it ſhould be *Occaſione non Performation' Aſſumption' prædict'*. *R. Rol.* 696. *l.* 10. *Hob.* 89.

In an Action upon the Caſe for an Eſcape againſt the Gaoler of the Priſon of the Caſtle of *M.* a Verdict, finding that the Defendant is Gaoler of the Priſon there, and permitted the Eſcape, but that there is no Caſtle there, is good. *R.* 2 *Rol.* 712. *l.* 2.

In an Action for Slander, if the Declaration and Verdict vary by the Addition, Omiſſion, or Change of any Words, which are not material for the Maintaining of the Action, or Increaſe of Damages. *R.* 2 *Rol.* 717. *l.* 15 *ad* 50. 718. *l.* 20 *ad* 50. *R. Hob.* 180. *R. Yel.* 152.

Otherwiſe, if the Words are totally different, tho' of the ſame Senſe. *Vide ante*, (S. 24.)

In an Action on the *St.* 2 *Ed.* 6. for not ſetting out of Tythes, and Declaration upon a Leaſe, if *A.* ſo long live, and continue Parſon, if it finds a Leaſe *if A. ſo long live*, without more, it is ſufficient; for it determines if he reſigns, or does not continue Parſon, and therefore the Subſtance is found; for the Words omitted are what the Law implies. *R.* 2 *Rol.* 718. *l.* 5.

In Ejectment, if it finds a Leaſe not materially variant. *Vide* 4 *Leo.* 14. 2 *Rol.* 704. *l.* 30, 40.

In Treſpaſs, if it finds him Guilty in a Moiety of the Land deſcribed in the Declaration, in the other Moiety Not Guilty. *R.* 2 *Cro.* 183.

So, if it varies in a Point collateral to the Matter in Iſſue: As, if *A.* avows and pleads a Leaſe for 21 Years, and a Grant of the Reverſion to him, and the Grant of the Reverſion is traverſed, if the Jury find a Leaſe variant from that pleaded, it is not material. *R.* 2 *Rol.* 705. *l.* 25.

If the Iſſue be on a Feoffment to the Uſe of *A.* for Life, and afterwards to *C.* in Tail, if it finds a Feoffment to the Uſe of *A.* for Life, and then to other Uſes, which are determined, and then to the Uſe of *C.* in Tail, it is good; for the Uſes determined are not material. *R.* 2 *Rol.* 712. *l.* 20.

In *Aſſumpſit* by Aſſignees of Commiſſioners of Bankrupt for 40*l.* if the Verdict finds the Debt 35*l.* only. *R. Al.* 28.

So, if a Verdict varies from the Sum demanded, it does not prejudice: As, in Debt, if it finds leſs due than was demanded; for the Reſidue may be paid. *R.* 2 *Rol.* 702. *l.* 50.

So, in *Aſſumpſit*, on the Cuſtom of Merchants, that either alone ſhall pay Money promiſed by two to be paid at certain Days, when they are found in Arrear on Account, if the Verdict varies as to the Days of Payment, the Days being paſt. 2 *Rol.* 703. *l.* 5.

So, if a Verdict finds a Variation, when, notwithſtanding, the Matter found is ſufficient to maintain the Iſſue, the Verdict is good.

[In Action on promiſſory Note, if there are two Counts, one on the Note in 1732, (as it was) and the other for Money lent in 1733, and as to this laſt

Count, the Iſſue varies from the Declaration as to the Time, it is not material. *Wright* v. *Cruſt*, *P.* 9 *G.* 2. *B. R. H.* 252.]

[If the Iſſue delivered is entered of *Trinity*, and the Record of *Niſi prius* is of *Eaſter*, it is not material. *Crofts* v. *Wilkin*, *T.* 9 *G.* 2. *B. R. H.* 303.]

[If Plaintiff's accepting Iſſue is omitted in Iſſue delivered, but inſerted in Record, and Defendant on Trial makes Defence, (though only by excepting to Plaintiff's Evidence in Point of Law) Verdict ſhall not be ſet aſide. *Barnes* 445.]

[*John John S.* in Declaration, *John S.* in Iſſue, immaterial. *Barnes* 476.]

[So that Plaintiff was indebted to Plaintiff. *Barnes* 477.]

[So Award of *Venire*, twelve *good*, *&c. Venire* itſelf twelve *free*. *Barnes* 487.]

(S. 31.) And it is ſufficient, if it may be ſupplied by Intendment.

And incident and neceſſary Circumſtances ſhall be ſupplied by Intendment, As, on a general Verdict, all Circumſtances, which warrant the finding of the Jury, ſhall be intended. 2 *Rol.* 694. *l.* 5.

So, if a Man may leaſe, reſerving the moſt accuſtomable Rent for 20 Years before, if the Jury find a Leaſe, rendering the cuſtomary Rent, it is ſufficient; for it ſhall be intended the moſt accuſtomable for 20 Years, for *cuſtomary* extends to all precedent Time. *R.* 3 *Co.* 9. *Heydon.*

A Bargain and Sale found, without mentioning the Conſideration, ſhall be intended, upon good Conſideration. *Cro. El.* 819. *R.* 2 *Rol.* 699. *l.* 10.

A Retainer of a Deputy, *&c.* found, ſhall be intended, by Deed. *R.* 9 *Co.* 51. *b.*

A Preſentment after a Reſignation, a Conſent to the Reſignation ſhall be intended. *R.* 2 *Cro.* 64. *Yel.* 61.

If it be found that he was ſeiſed in Fee, and made a Will, upon which the Queſtion ariſes, it ſhall be intended that it was Land in *Socage*, and that he deviſed it by his Will, tho' it be not directly found. *R.* 2 *Rol.* 696. *l.* 20. 25. *R.* 2 *Rol.* 223.

So, *that he died ſeiſed*. *R.* 2 *Rol.* 697. *l.* 35. *Vide ſeveral Caſes to the ſame Effect*. 2 *Rol.* 698. *l.* 20, 35. *R. cont.* 2 *Rol.* 699. *l.* 20.

If Letters Patent are found, they ſhall be intended under the Great Seal. *R.* 2 *Rol.* 699. *l.* 35.

If it finds, that *A. recogn' ſe debere* before the Mayor of the *Staple*, it ſhall be intended, that it was by Writing obligatory, and according to the Form of the Statute. *R.* 4 *Co.* 65. *b.* 2 *Rol.* 700. *l.* 35. *Hob.* 55.

If it finds a Court-Baron held at the uſual Place, it ſhall be intended within the Manor. *R.* 9 *Co.* 51. *Hob.* 56.

If the Jury find that the Defendant was not taken by a *Ca. Sa.* but by an *Alias Capias*, it ſhall be intended that the *Alias* was on the ſame Judgment, and between the ſame Parties, otherwiſe it would not have been doubted, whether the *Alias* was ſufficient. *R.* 2 *Rol.* 696. *l.* 50. *Hob.* 55. *Vide Cro. Car.* 458.

So, it ſhall be intended, that he was kept in Execution, for it is conſequential on the Taking. *R.* 2 *Rol.* 697. *l.* 10. *Hob.* 56.

Treſpaſs in four Acres of Land in *A.* and *B.* Verdict of the third Part of two Acres, and it does not ſay in what *Vill*, it ſhall be intended that every Acre was in both *Vills*. *R. Yel.* 228. *Cont. Sav.* 35. *Acc. Cro. El.* 465.

If it be found that a Man *Virtute Warranti* made a Leaſe, it ſhall be intended that he purſued his Warrant, tho' all the Circumſtances are not found. *R. Cro. El.* 167.

If a Verdict finds a Leaſe by Tenant in Tail, it ſhall be intended that he continues alive. *R. cont. Cro. El.* 407. *Vide ante*, (S. 66, 67, 68.)

If it finds a Grant by Patent, and *ulterius* Grant, *&c.* it ſhall be intended by the ſame Patent. *R.* 2 *Brownl.* 232, 4.

If it finds a Deprivation by a Biſhop, it ſhall be intended well made. *R. Jon.* 393.

So,

So, Words ſhall have a reaſonable Intendment: As, in Aſſize, if the Jury find that the Defendant is Tenant, and diſſeiſed the Plaintiff, it is ſufficient, without ſaying, that he is Tenant of the Freehold, or that the Plaintiff was ſeiſed and diſſeiſed; for it ſhall be intended that he is Tenant of the Freehold, and not by *Statute-Merchant*, or otherwiſe. *R.* 2 *Rol.* 693. *l.* 40. (S. 32.) And ſhall have a reaſonable Intendment.

If the Jury find the Contents of a Deed, *&c.* and afterwards the Deed in *hæc Verba*, the Court will judge on the Deed itſelf; and not on the Collection of the Jury. *Vau.* 77.

So, if a Verdict finds that *A.* granted to his Companion, the Court conſtrues it, that he releaſed; for this is the proper Conveyance from one Joint-tenant to another. 2 *Sand.* 97. (S. 33.) And a reaſonable Conſtruction.

But Intendment does not aid a Matter, which ſtands indifferent, and is material: As, that Rent was demanded upon the Land. *Vide ante*, (S. 20.) (S. 34.) When an Intendment does not aid.

If it finds a Bargain and Sale, it ſhall not be intended that it was inrolled. *Hob.* 262.

So, if it finds a Fine, it ſhall not be intended with Proclamations. *Ibid.*

If it finds a Gaoler inſufficient at the Time of the Eſcape, in an Action againſt the Superior, it ſhall not be intended that he was ſo at the Time of the Action. *R. Eq. Ca.* 527.

So, it ſhall not be intended that no Damages were given for a Thing, which is ſenſible, tho' inſufficiently alledged. *R.* 1 *Sal.* 129, 364.

(S. 35.) When Verdict aided by a ſpecial Concluſion.

So an imperfect Verdict may be aided by a ſpecial Concluſion; for the Court will not doubt of any Thing, but what is referred to the Court by the Verdict. *R.* 5 *Co.* 97. *a.* *R. Mo.* 268. 2 *Rol.* 698. *l.* 30, 40. 702. *l.* 10. *D. Lit.* 94, 134. (S. 35.) For the Court doubts nothing but that which is referred to the Court.

As, if the Jury refers, whether a Reſignation, *&c.* be good, whether there was a Reſignation, ſhall not be doubted. *R. Yel.* 61. 2 *Cro.* 64.

If Entry be lawful, it ſhall not be doubted whether *A.* who commanded the Entry, was alive. *R.* 3 *Leo.* 152.

Nor ſhall it be doubted whether the Defendant's Title is good, tho' none found, if the Plaintiff's Entry is not lawful. *R. Cro. El.* 438.

If the Jury find the Defendant Guilty, if the Will was executed, it ſhall not be doubted, whether the Deviſor was ſeiſed. *R. Eq. Ca.* 256.

So, if a ſpecial Verdict does not find a Title for the Plaintiff, but concludes, if the Patent be good for the Defendant, if not, for the Plaintiff, if the Court judges the Patent void, the Plaintiff ſhall have Judgment, for the Court will intend that the Jury were ſatisfied that the Plaintiff had a good Title, if it was not avoided by the Patent. *R. Cro. Car.* 22.

So, if the Jury conclude, *if the Deviſe is in Fee, for the Defendant*, it ſhall not be doubted whether there was other Land in Fee to ſupply the Deviſe to the Plaintiff. *R. Cro. Car.* 130.

If ſuch Goods were diſtrainable, for the Plaintiff, it ſhall not be doubted whether there was a good Cauſe for the Diſtreſs. *Semb. cont.* 1 *Sal.* 249.

So, if a Verdict finds a ſpecial Matter in Aſſiſe, and ſays beſides, that the Plaintiff was ſeiſed and diſſeiſed, ſuch ſpecial Concluſion waives the ſpecial Matter. 2 *Rol.* 696. *l.* 20. (S. 36.) And therefore a ſpecial Concluſion waives the ſpecial Matter.

If the Plaintiff declares upon a Leaſe by Father and Son, the Jury find a Leaſe by Father and Son, but that the Father was Tenant for Life, Remainder to the Son, and ſo it was a Leaſe by the Father only, and a Confirmation by the Son, and concludes whether it was a good Revocation: on ſuch Concluſion the Court does not take Notice of the other Matter. *R. Jon.* 393.

(S. 37.) So a special Conclusion aids other Defects.

So, a special Conclusion on a single Point aids Imperfection in other Parts of the Verdict: As, if the Jury find a special Matter, and conclude, *if the Lease found be a Revocation, &c.* this aids a Variance between the Declaration and Verdict. *R.* 2 *Rol.* 701. *l.* 30.

So, such a special Conclusion aids a Repugnancy between one Part of the Verdict and another. *R.* 2 *Rol.* 701. *l.* 45. *Hob.* 54.

(S. 38.) But a Conclusion does not aid.

(S. 38.) If it be contrary to the Premisses.

Yet the Conclusion does not aid, when it is not warranted by the Premisses: As, in Assise for Rent, if the Jury find a Demand and Refusal of the Rent, *et sic disseisivit*, without finding a Demand on the Land, it is not sufficient; for the Conclusion is only their Deduction from the Premisses, and therefore it shall not be intended from thence that it was upon the Land. *R.* 2 *Rol.* 693. *l.* 50.

And when the Jury make a Conclusion contrary to what the Law and the Court would adjudge on the special Matter before found, on which their Conclusion is founded, the Court will judge upon the special Matter. *Hob.* 53. *Vide* 3 *Leo.* 112. *R. Mo.* 105, 269.

As, if the Jury find a Receipt by the Executor of Rent due after the Death of the Testator on a Lease for Years, and conclude, *So Assets*, the Court will adjudge for the Defendant; for the Rent runs with the Reversion. *Dy.* 362. 2 *Rol.* 702. *l.* 5.

If it finds *A.* seised, that *B.* entred and leased to the Plaintiff, and if *A.* has Title, *for the Plaintiff*, but does not find that *B.* entred by Disseisin, which shall not be intended, and then his Lease to the Plaintiff is void, tho' the Jury doubt of Nothing but the Seisin and Title of *A.*; yet the Court will not give Judgment for the Plaintiff. *R.* 2 *Rol.* 700. *l.* 5.

(S. 39.) Or if the special Matter be out of the Issue.

So a Verdict, which finds Matter out of the Issue, is void for so much, tho' thereon it concludes generally for or against the Plaintiff or Defendant. *Vide Ante*, (S. 18.)

As in Annuity by Prescription, and Issue on the Prescription, if the Jury find the Prescription, but that Nothing was in Arrear, yet Judgment shall be for the Plaintiff. *Hob.* 54.

(S. 40.) Or contrary to the General Verdict.

So if a Verdict begins with a direct Verdict, and afterwards finds special Matter, upon which the Law will adjudge contrary to the direct Verdict, and submits the Whole to the Court, the Court will give Judgment according to the special Matter. *Hob.* 53. *Vide Dyer* 115, 370. *Cro. Car.* 212.

As, if the Issue be, whether *A.* was taken by a *Cap. ad satisfaciendum*, and the Jury find that he was not taken by a *Ca. Sa.* but that on the same Judgment he was taken by an *Alias Ca. Sa.* and *So, &c.* *R. Hob.* 53. 2 *Rol.* 695. *l.* 20.

If Issue be on an *Assumpsit* to save Bail harmless, and the Jury find that the Defendant assumed, but that the Bail was condemned at the Suit of another, not in the Suit against him for whom he was Bail. *Semb. Cro. El.* 459.

(S. 41.) A Verdict needs not precise Certainty.

A Verdict needs not precise Certainty: As, if the Jury find a Commission *secundum Formam Statuti*, it is sufficient, tho' it does not shew the Statute pursued in all Points. 5 *Co.* 7. *b. de J. Eccl.*

So, if it finds that it was not Parcel, but was demised as Parcel, *Pratextu cujus fuit* reputed Parcel, it is sufficient on Issue, whether reputed Parcel. *R.* 1 *Sid.* 191.

(S. 42.) Nor Certainty in a Thing not material.

So Certainty is not necessary in a Case where it is not material: As, in Debt against an Heir who pleads, *Nothing by Descent*, if the Jury find that he had

divers

divers Lands without ſaying what, it is ſufficient, for, for a falſe Plea, there ſhall be a general Verdict againſt him, without Regard to Aſſets. *R.* 2 *Rol.* 694. *l.* 40. 1 *Rol.* 234.

(S. 43.) So a Verdict is aided by a Finding to Part of the Declaration.

So a Verdict may be aided by taking it only upon one Part of the Declaration, and not upon the Whole.

And it may be taken upon any Part of the Declaration, to which the Evidence is applicable. *Per Holt.* 1 *Sal.* 133.

[If a Verdict is given generally for Plaintiff, and by Miſtake, on a Count not proved, inſtead of the Count proved; the Court will order the Verdict to be entered on the right Count, and not grant new Trial. *Sulſton* v. *Norton, M.* 2 *G.* 3. 3 *B. M.* 1235.]

(S. 44.) By Amendment.

When a Verdict ſhall be amended. *Vide Amendment*, (P.)

(S. 45.) When a Verdict ſhall be avoided.

(S. 45.) By Miſdemeanor of the Jury and Parties.

After the Departure of the Jury from the Bar, they may return into Court to hear any Evidence, of which they are in Doubt. 2 *Rol.* 676. *l.* 10.

But if the Jury examine Witneſſes by themſelves, tho' Nothing is ſaid but the Evidence, which was given in Court, the Verdict ſhall be avoided. *R. Cro. El.* 411. 2 *Rol.* 715. *l.* 20. 1 *Leo.* 305. *R.* 2 *Rol.* 262. *Mo.* 452. *Pal.* 326.

So, if a Witneſs delivers to them a Bundle of Writings, which were ſhewn to the Court, but ſome of them not read as Evidence. *R.* 2 *Rol.* 714. *l.* 10.

Tho' the Jury ſay, that it was laid aſide, and not inſpected by them; for they ought to inform the Court of it. *R.* 2 *Rol.* 714. *l.* 25.

So, if the Jury receive Money of the Party or his Agent, after Departure, before they have agreed on their Verdict, the Verdict ſhall be avoided. *Per* 2 *J. Wray cont.* 1 *Leo.* 18.

Or eat or drink at the Charge of the Party. *Co. Lit.* 227. 2 *Rol.* 713. *l.* 50. 1 *Leo.* 133.

Or throw *Croſs or Pile*, and give a Verdict accordingly. *R.* 2 *Jon.* 83. *R.* 2 *Lev.* 140, 205. *Barnes* 441.

[If one Perſon, whoſe Name was not in the Box, anſwers for another. *Barnes* 453.]

[If after the Jury are retired, they receive Papers from one Party without Conſent of the other, the Verdict ſhall be ſet aſide. *Jennings* v. *Waine, P.* 8 *G.* 2. *B. R. H.* 116.]

So, if a Party, or any for him, delivers a Letter or other Writing not given in Evidence to any of the Jury, and a Verdict is given for him. *Co. Lit.* 227. *b.*

Or a Writing ſhewn in Court, which the Judge ſaid was not material to the Iſſue. *Cont. per Poph. Qy. per Roll.* 2 *Rol.* 715. *l.* 15.

Or a Bundle of Writings, ſome of which were read in Court, ſome ſhewn to the Court, but not read in Evidence. *R.* 2 *Rol.* 714. *l.* 10. *Vide Lit.* 69. *Pal.* 326.

Tho' the Jury ſay, they did not inſpect them. 2 *Rol.* 714. *l.* 25.

So, if the Party gives to any of the Jury, before he is ſworn, an Eſcrow of the Evidence afterwards given, which he ſhews to his Companions. *R.* 2 *Rol.* 714. *l.* 45. 715. *l.* 42. *Sti.* 383.

So, if the Plaintiff ſays to the Jury upon their Departure, *It is as clear for me as the Noſe of my Face*; for this is New Evidence, and ſtrongly perſwades. *R.* 2 *Rol.* 716. *l.* 10.

A Thing of ſuch a Nature, as will avoid a Verdict, muſt be returned on the *Poſtea*, and cannot be furniſed. *R. Cro. El.* 616. 3 *Leo.* 267. *R.* 2 *Rol.* 262. *Pal.* 325.

And Eating and Drinking at the Charge of the Party ought to be alledged before the Verdict received, and not afterwards. *R. Mo.* 17. *Semb.* 15. *H.* 7. 1. *b.*

But if ſuch Matter appears by Affidavit afterwards, the Verdict is uſually diſcharged. 2 *Lev.* 140, 205.

[It may be moved after Motion in Arreſt of Judgment, on new Matter diſcloſed. *Barnes* 441, 443.]

And, if the Thing, wherein the Jury miſdemean themſelves, is by the Act of the Party who has Benefit by the Verdict, there ſhall be a New Trial, otherwiſe the Jury only ſhall be fined. *Per Holt. Sal.* 645. 15 *H.* 7. 1. *b.*

(S. 46.) When not.

But if the Jury take with them Deeds, *&c.* given in Evidence, it does not avoid the Verdict, tho' it was without the Direction of the Court. *R. Cro. El.* 411. *Per Holt, Sal.* 645.

So, if they take Books, Writings without Seal, *&c.* given in Evidence, without the Conſent of the Parties, or of the Court. *R. Cro. El.* 411. 2 *Rol.* 715. *Co. Lit.* 227. *Mo.* 452.

Tho' they take them from the Party, or his Agent. *R. Cro. El.* 411. 2 *Rol.* 715. *l.* 10, 50. 716. *l.* 5.

So, if they take Depoſitions ſhewn in Evidence, tho' all were not read in Court. *Lit.* 69.

So, if a Juror himſelf ſhews to his Companions a Writing not given in Evidence, this does not avoid the Verdict, if he had it not from the Party or his Agent. *R. Cro. El.* 616. 2 *Rol.* 715. *l.* 35. *Mo.* 546.

So, if the Plaintiff ſpeaks to the Jury, if he ſays Nothing of the Cauſe. *R.* 2 *Rol.* 715. *l.* 45.

[Tho' one of the Parties deſire a Juror to attend in his Cauſe. *Suel* v. *Timbrell, M.* 12 *G. Str.* 643.]

Or, if a Juror challenged and withdrawn ſtands with the Jury for half an Hour, if he does not give Evidence. *R.* 2 *Rol.* 85.

So, if the Jury eat or drink before the Verdict, if it be not at the Charge of the Party, or his Agent. *Co. Lit.* 227. *b.* 2 *Rol.* 713. *l.* 45, 55. *R.* 1 *Leo.* 133. 3 *Leo.* 267. *R. Mo.* 33, 599. *Barnes* 441.

Or at the Charge of the Party after they are agreed. *Co. Lit.* 227. *b.* 2 *Rol.* 713. *l.* 40.

So, if they eat and drink in View of the Judge with the Conſent of the Court. 20 *H.* 7. 3. *b.*

[Tho' Jurymen leave the Reſt for ſome Time. *Barnes* 441.]

[Tho' a Juror be called *Henry* inſtead of *Harry*. *Barnes* 454.]

[A Verdict ſhall not be ſet aſide on Affidavit of two of the Jurors, that the Jury intended to give 7*s.* only, beſides 23*l.* 7*s.* brought into Court, inſtead of 23*l.* 17*s.* for which the Verdict was declared and entred up. *Palmer* v. *Crowle, P.* 12 *G.* 2. *Andr.* 382.]

[Affidavit of Jurymen *confeſſing* they toſſed up for Verdict, not ſufficient. *Semb. Barnes* 438.]

(S. 47.) By Arreſt of Judgment.

After Verdict a Man may alledge any Thing in the Record, in Arreſt of Judgment, which may be aſſigned for Error after Judgment. 2 *Rol.* 716, *l.* 30, 45. 1 *Sal.* 77.

So after interlocutory, before the principal, Judgment. *R. Cro. El.* 914. 235. 1 *Leo.* 309. *Cont.* 1 *Vent.* 253. *Acc.* 2 *Mod. Ca.* 265.

And Judgment ſhall not be entred till four Days after Verdict, if there are ſo many within the Term, becauſe the Plaintiff may move in Arreſt of Judgment. *R.* 1 *Sal.* 77.

Otherwiſe, if there are not four Days within the Term. 1 *Sal.* 77.

So, any Thing which ſhews the Writ abated, but if abateable only, it is not ſufficient. *Ibid.*

If on a Motion in Arreſt of Judgment, there is a Rule to ſtay it, and afterwards the Court is divided, there cannot be Judgment. 1 *Sal.* 17.

Other-

Otherwiſe, if the Court be divided on the firſt Motion. 1 *Sal.* 17.

[After Verdict, the Court will do what they can to help Declaration, but not after Judgment by Default; ſo if Plaintiff has not averred Performance, or Readineſs to perform what was to be done on his Part, Judgment ſhall be arreſted. *Collins* v. *Gibbs*, *M.* 33 *G.* 2. 2 *B. M.* 899.]

[In an Information for two Penalties on two Statutes for the ſame Fact, and Verdict *pro Rege*, and one is bad, Judgment cannot be arreſted as to Part, and given *pro Rege* for the other, but muſt be arreſted *in toto*. *Rex* v. *Roſevere*, *T.* 1730. *Bunb.* 286, 295.]

[If good Notice of Trial is given and countermanded, then ſecond Notice, but Name of Cauſe omitted; this ſecond continued, and Name of Cauſe inſerted, and Cauſe tried; Verdict ſet aſide; the Continuance cannot cure the ſecond. *Barnes* 297.]

[If on a bad Juſtification in Treſpaſs, there is Verdict for Defendant, yet it ſhall be ſet aſide, and Judgment entred for Plaintiff. *Barnes* 255.]

But he cannot aſſign Error in Fact in Arreſt of Judgment. 2 *Rol.* 716. *l.* 20.

As, that the Plaintiff is an Infant, and appeared by Attorney. *Bro. Attorney* 46.

[Judgment after Verdict ſhall not be arreſted for an Objection that would have been good on Demurrer. Thus, in Debt on Security-bond of a Bailiff of *G.* Hundred, conditioned if he duly executes his Offices *within* that Hundred, and executes all Warrants directed to him, and makes due Return, then, *&c.* Plea of Performance; Replication, that Defendant had not duly executed a Warrant directed to him; Rejoinder, he had; Verdict againſt him; he ſhall not arreſt Judgment becauſe it is not alledged, that the Warrant was directed to him as Bailiff of *G.* Hundred. *Weſton* v. *Maſon*, *T.* 5 *G.* 3. 3 *B. M.* 1725.]

[*Per Curiam* — After Judgment on Demurrer, Defendant ſhall not come to arreſt Judgment on the Return of the Inquiry, for an Exception that might have been taken on arguing the Demurrer. *Secus* in Caſe of Judgment by Default, or if the Fault ariſes on the Writ of Inquiry or Verdict. *Edwards* v. *Blunt*, *P.* 7 *G.* *Str.* 425.]

Nor a Matter of Record, which does not appear by the ſame Record, as, Want of an Original, Warrant of Attorney, *&c.* 1 *Sal.* 77.

Nor can move in Arreſt of Judgment, if the Roll where the Judgment ſhould be entered, or the *Poſtea*, is not in Court. *Pr. Reg.* 247. *Mod. Ca.* 24. 1 *Sal.* 78.

So, after Judgment *Quod capiatur* upon an Indictment or Information, he ſhall not move in Arreſt, for the Judgment is final. 1 *Sal.* 78.

Nor after a Nonſuit. *R. Lit.* 253.

In *B. R.* he may move in Arreſt of Judgment within four Days after the *Poſtea* brought into Court, in *C. B.* only within four Days after the Commencement of the Term. 1 *Sid.* 36. *Lut.* 11.

And, if Judgment is ſigned before, or on the 4th Day, it is irregular, tho' no Execution till after. *R.* 5 *Mod.* 205.

[*Sunday* is not eſteemed one of the four Days within which Arreſt of Judgment muſt be moved for. *M.* 7 *G.* 3. 4 *B. M.* 2130.]

[Motion in Arreſt of Judgment muſt be on the Appearance-day of the Return of *Habeas Corpus jur.* *Barnes* 445.]

[If it is to be moved the laſt Day of Term, there muſt be Notice given. *Barnes* 247.]

[Defendant in an Indictment may move in Arreſt of Judgment at any Time before Judgment ſigned. *Rex* v. *Hays* *T.* 3 *G.* 2. *Str.* 843.]

[If there is a Demurrer to one Count, and a Verdict for Plaintiff on another, Judgment cannot be arreſted, till the Demurrer is determined, for till then the Proceedings are not compleat. *Goodright* v. *Hodgſon*, *M.* 12 *G.* 2. *Andr.* 282.]

[After Verdict, the Court will ſuppoſe every Thing right, unleſs the contrary appears on the Record. *Bull* v. *Steward*, *M.* 23 *G.* 2. 1 *Wilſ.* 255.]

[Judgment ſhall not be arreſted becauſe the Defendant's Name is put in two Counts inſtead of Plaintiffs. *Richards* v. *Simonds*, *M.* 10 *G.* 3. 3 *Wilſ.* 40.]

[Judgment ſhall not be arreſted, becauſe in joining Iſſue the Defendant's Name is repeated, inſtead of inſerting the Plaintiff's. *Rawbone* v. *Hickman*, P. 9 *G.* 1. *Probyn* v. *Churchman*, *M.* 5 *G.* 2. *Cleaver* v. *Jordan*, *M.* 7 *G.* 2. *Harvey* v. *Peake*, *M.* 6 *G.* 3. 3 *B. M.* 1793.

(S. 48.) By an inconſiſtent Verdict upon another Iſſue.

So a Verdict may be avoided by a contrary Verdict between Others.

But, if there be a Verdict in *Quare Impedit*, that *A.* was not admitted, &c. upon the King's Preſentation, a contrary Verdict in a Right of Advowſon between the King and others, not Parties to the *Quare Impedit*, does not avoid the Verdict in *Quare Impedit*. *R. Cro. Car.* 590.

So, if a Verdict upon another Iſſue in the ſame Action be inconſiſtent: As, in Treſpaſs againſt two, if One pleads *Not guilty*, and it is found againſt him, the other pleads, *given by the Plaintiff*, which is found againſt the Plaintiff, there ſhall be Judgment againſt the Plaintiff on the firſt Verdict alſo; for the Title appears againſt him. *Hob.* 54. *Mod. Ca.* 10. 2 *Cro.* 134.

Otherwiſe, if the Defendants are ſued ſeverally. *Hob.* 54.

So, in *Trover*, if one Defendant pleads *Not guilty*, and is found Guilty, the other pleads a Releaſe, which is found for him, the Plaintiff ſhall not have Judgment againſt him who pleaded *Not guilty*; for, being jointly charged, the Releaſe to one diſcharges both. *R.* 4 *Mod.* 379.

So, in an Action againſt two, One is found Guilty, the other pleads a Juſtification, whereupon Iſſue is joined on an immaterial Point, and the Defendant at the Trial makes Default, whereby being out of Court, there cannot be a Repleader, the Plaintiff cannot have Judgment againſt One, but the Action abates againſt both. *Mod. Ca.* 10.

[*A.* and *B.* have mutual Demands; each brings Action; *A.* gives Notice to Set-off; *B.* does not; both Cauſes come on at ſame Sittings; — but *A.* v. *B.* firſt, *A.* takes Verdict for his whole Demand 30*l.*; then *B.* v. *A.* comes on, *A.* offers to Set-off, but is not allowed, and *B.* has Verdict for his whole Demand 11*l.*; this Verdict againſt *A.* ſhall be ſet aſide, with Coſts of Nonſuit; but he ſhall remit ſo much of the Damages recovered by him as exceeds the Balance of the mutual Debt. *Brown* v. *Baſkerville*, *T.* 1 *G.* 3. 2 *B. M.* 1229.]

But otherwiſe, if the Verdict does not appear inconſiſtent: As, in Treſpaſs againſt *A.* and *B.* One pleads *Not guilty*, the other juſtifies for Preſervation of the Peace, and it is found for him, and for the Plaintiff on the other Iſſue, the Plaintiff ſhall have Judgment, for he might be guilty at another Time. *R.* 2 *Cro.* 134.

Indebitatus Aſſumpſit againſt *A.* and *B.* and Judgment againſt *A.* by *Nil dicet*, *B.* pleads Payment, and there is a Verdict for him, *A.* ſhall not be diſcharged contrary to his own Confeſſion. *Per Holt*, 1 *Sal.* 23.

(T) Poſtea.

BY Rule 2 *Ja.* 2. in *C. B.* The Clerk of Aſſiſe, &c. ſhall deliver the *Poſtea* to the Prothonotary on the *Quarto die poſt* of the Return of the Writ of *Niſi prius* in *Bank*, on Pain of 20*l.*

And he keeps it in the *Interim*, and ſhall have 6*s.* 8*d.* for his Attendance with it before. *Mod. Ca.* 24.

And he ought not to deliver the *Poſtea* till that Time to any, except the Clerk in Court. *Ibid.*

If the Defendant would move in Arreſt of Judgment, he muſt give Notice, and have the *Poſtea* in Court.

And a Rule upon the *Poſtea*, that it be brought into Court, is Notice. 1 *Sal.* 78.

(V) Con-

(V) Continuance of Suit or Proceſs.

(V. 1.) When neceſſary.

AFTER Appearance the Suit muſt be continued, till Judgment, from One Term to another.

So, if the Term be adjourned from *Oct' Mich' ad Menſ' Mich'*, there ought to be a Continuance entred from one Day to the other. *R.* 1 *Rol.* 486. *l.* 20.

If the Plaintiff declares in *Michaelmas* Term, and, after Imparlance to another Term, declares *de Novo*, as the Courſe is in *C. B.* there ought to be a Continuance from one Term to another. *R. Cro. El.* 412.

[Defendant in Cuſtody on *Ca. Sa.* diſcharged on written Agreement; above a Year after, new *Ca. Sa.* iſſues without Continuance on the Roll; it ſhall be ſet aſide. *Barnes* 205.]

[On *Nul tiel Record*, Plaintiff may continue the Day for bringing in the Record. *Barnes* 84.]

If Judgment be on Default or Demurrer in *B. R.* and a Writ of Inquiry awarded, a Continuance ſhall be entred from the firſt to the ſecond Judgment; for the firſt is only an Award. *R.* 1 *Rol.* 485. *l.* 50. *R. Yel.* 97. *R.* 11 *Co.* 6. *b. Dub.* 1 *Rol.* 408.

But after Default the Continuance in *B. R.* is only by *Dies dat'* to the Plaintiff, for the Defendant is out of Court. *R.* 1 *Rol.* 486. *l.* 5, 16. *R.* 1 *Sid.* 16. *Mod. Ca.* 9.

And in *C. B.* no Continuance is neceſſary after Judgement by Default, till Judgment on the Writ of Inquiry. *R.* 1 *Rol.* 486. *l.* 7. *R.* 11 *Co.* 6. *b. Acc. Cro. El.* 144.

Nor in *B. R.* where the Writ of Inquiry is returnable in the ſame Term. *R.* 1 *Rol.* 486. *l.* 4.

So, in an inferior Court there muſt be a Continuance from one Court to another, after the Writ of Inquiry awarded. *R. Yel.* 97. *Noy* 120. *viz.* by Day to the Plaintiff.

And, if Judgment be confeſſed at one Court, and not entered till the next Court, there ſhall be a Continuance to that Court. *R.* 1 *Rol.* 486. *l.* 10.

So, in a Writ of Error, after the Parties appear and proceed, it muſt be continued.

(V. 2.) When not.

But, if the Sheriff on a *Pluries Replevin* in *Mich.* Term returns a Claim of Property, but Nothing is done till *Eaſter* Term, and then the Defendant appears and pleads, and Judgment is given, Default of Continuance from *Mich.* to *Hillary* Term is no Error, for till Appearance there can be no Diſcontinuance, for the Parties have no Day in Court. *R.* 1 *Rol.* 485. *l.* 25.

So, after final Judgment, there need not be any Continuance. *R.* 1 *Rol.* 485. *l.* 55.

So between Verdict and Judgment there need not.

And therefore, if Iſſue be joined by one Defendant, and Verdict thereon, and a Demurrer by the other and ſeveral Continuances entred to the Demurrer, but none after the Verdict, and then there is Judgment on both, it is no Error. *R.* 1 *Rol.* 485. *l.* 35. *R. Cro. Car.* 236.

So, if on a Plea after the laſt Continuance at *Niſi prius* the Jury is diſmiſſed, and no Continuance is entred till the Day in *Bank*, it is no Error; for the Day at *Niſi prius* and in *Bank* are the ſame Day. *R.* 1 *Rol.* 485. *l.* 40.

[Continuance need not be entered in Record of *Niſi prius*; therefore, if after Iſſue joined, and before Day of *Niſi prius*, one of Defendants die; Suggeſtion of it, and *Venire Fa.* between Plaintiff and ſurviving Defendant, and *Jurata* at the Foot agreeable thereto, is good. *Barnes* 469.]

So in the Courts of *London* it is not neceſſary, tho' it is in other inferior Courts. 2 *Sho.* 424.

(V. 3.) How it ſhall be entred.

The Continuance ought to be to a Time certain: As, to the next Term, *&c. Semb.* 3 *Bul.* 233.

So in an inferior Court, which ought to be held at a Day certain, as from three Weeks to three Weeks, *&c.* the Continuance muſt be to the next Court, *viz.* on ſuch a Day. *R.* 1 *Rol.* 484. *l.* 35. *Dy.* 262 *b.* *R.* 2 *Cro.* 571. *R. Cro. El.* 105.

And it is not ſufficient to ſay at the next Court generally, tho' it be ſaid *ad quam proximam Curiam, ſcil't* ſuch a Day, *&c.* *R.* 1 *Rol.* 484. *l.* 35. *Cont. R.* 1 *Rol.* 486. *l.* 35. *Cro. Car.* 254.

But, if the Court is to be held when the Bailiffs pleaſe, *&c.* it is ſufficient to make the Continuance to the next Court. *R.* 1 *Rol.* 484. *l.* 25. *Cro. Car.* 254.

So, in *Cheſter*, they are to the next Court generally, and not to a Day certain. *Sho.* 95.

So a Continuance in an inferior Court muſt ſay, *coram Quo* the next Court is to be held. *Sho.* 319.

So Continuances muſt be entred from one Term to another, without intermitting a Term, and therefore the Continuance of a Plea on the Prayer of the Defendant, thro' one Term or more *meſne*, is bad. *R.* 1 *Rol.* 484. *l.* 42. *Sti.* 339. *R.* 2 *Cro.* 304.

So a Continuance by *Cur. adv. vult*, intermitting a Term, is a Diſcontinuance. *R.* 1 *Rol.* 484. *l.* 45.

So, if the Term is adjourned to another Day in the ſame Term, as from *Tres Mich'* to *Menſ' Mich'*, the Continuance ought to be to *Menſ' Mich'*, and not to *Oct' Hill'* otherwiſe it will be a Diſcontinuance. *R.* 1 *Rol.* 130. *l.* 10.

So, if Day be given, on *Nul tiel Record*, from *Eaſter Term* to *Mich.* Term, as it may, yet Continuances ought to be entred from *Eaſter* to *Trinity*, and ſo to *Mich.* Term, otherwiſe it is Error. *R.* 1 *Rol.* 485. *l.* 5.

So a *Capias* cannot be continued, intermitting a Term; for the Defendant ſhall not ſtay in Priſon. 1 *Rol.* 484. *l.* 20. *Dyer* 175. *a.* *Sal.* 700.

Nor a *Capias Utlagatum*. *Cro. El.* 467.

So, in an Appeal, if the Proceſs leaves a Day between, it will be a Diſcontinuance; for if the Original was returnable *Quind' Mich'*, which was 16 *Oct.* the *Capias* muſt be teſted the ſame Day; for if it be teſted 17 *Oct.* or the next Return, tho' all in the ſame Term, which is but one Day in Law, it will be bad. *R.* 2 *Cro.* 284. *Yel.* 205. 1 *Bul.* 142.

But an Original may be returnable two or three Terms after the *Teſte*; for the Defendant has no Prejudice. 1 *Rol.* 484. *l.* 15. *Dy.* 175. *a.*

So a *Diſtringas*. *Dy* 175. *Bro. Jour* 71.

So, in a Writ of Execution, the Juſtices may give Day at their Will: As, in a *Scire facias* to execute a Fine. 1 *Rol.* 484. *l.* 32.

So in *Exigent*, *Grand Cape*, or other Proceſs in real Actions; for five Counties, nine Returns, *&c.* cannot otherwiſe intervene, as they ought, between the *Teſte* and Return. *Dal.* 104.

So in a *Capias ad ſatisfaciendum*, or other Proceſs in Execution; for no Return is neceſſary. *R. Sal.* 700. *Vide Return*, (F. 1.)

So, in an inferior Court, if the Continuance is by *idem Dies*, inſtead of *eadem Hora*, it will be good. *R. Mo.* 459.

So, if the Continuance be to *Tres Mich'*, and Nothing done after till *Quind' Mart*, there is no Diſcontinuance, for it is all in the ſame Term.

[If to Declaration of *Trinity*, there is Imparlance to *Michaelmas* Term, and Defendant procures Judge's Order for Time to plead till 15th *December*, the Imparlance ſhall be continued to *quinden. Mart.* *Barnes* 161.]

A Continuance may be entred on the Plea Roll. *R.* 2 *Cro.* 304.

Or on the Roll of the *Venire* after Iſſue. 2 *Cro.* 304.

[If proper Continuances are entred on the Plea-roll, the Want of them on the *Niſi Prius* Roll is not material. *French* v. *Wiltſhire*, *M.* 11 *G.* 2. *Andr.* 67.]

[When the Trial is deferred, if the *Venire facias* is returned and filed, the proper Entry is, that the Jury *Ponitur in reſpect.*; if it be not filed, enter a *Non miſit breve*; either Way will prevent a Diſcontinuance. *Rex* v. *Hare and Man*, *H.* 6 *G. Str.* 266.

(V. 4.) At what Time.

By the Courſe in *B. R.* the Continuances are uſed to be all entred, after Iſſue or Demurrer before Judgment, on the Back of the Roll. *R.* 1 *Rol.* 485. *l.* 15.

And, if the Plaintiff will not enter the Continuances to avoid Coſts if Judgment ſhould be againſt him, the Defendant may enter them. 1 *Rol.* 487. *l.* 30. 1 *Leo.* 105.

[If Bill is of *Eaſter*, and in *Trinity* Defendant pleads, and Iſſue joined, and Paper-Book delivered without Continuance from *Eaſter* to *Trinity*, it ſhall not be ſet aſide; for it may be entred at any Time on the Roll. *Wilkes* v. *Wood*, *M.* 4. *G.* 3. 2 *Wilſ.* 203.]

So, if the Continuances are not entred, the Court may amend the Roll by ordering them to be entred any Time before Judgment.. *R. in Scire facias.* 3 *Lev.* 430.

So, till the Plea Roll, no Advantage ſhall be taken for Default of entring a Continuance. 1 *Sal.* 179.

So, before Judgment, there ſhall be no Diſcontinuance againſt the King; for, as to Matters to which there was no Plea, the Attorny General may take Iſſue, or enter a *Nolle proſequi* at his Election. *Hard.* 504.

So Continuances may be entred on a *Latitat*, or Original, to avoid the Statute of Limitations, after the Statute pleaded. 1 *Sid.* 53, 60.

Or on a *Fieri facias* or *Elegit*, many Years after, when a new *Fieri facias* is awarded, to ſave a *Scire facias.* 1 *Sid.* 59.

So in *C. B.* a Continuance ſhall be allowed to be entred within a Year after Iſſue. *Sav.* 54.

So in the *Exchequer*.

But, it is in the Diſcretion of the Court to permit an Entry of Continuances, or not. *R. Sav.* 54.

(V. 5.) By what Words.

If Proceſs be teſted in one Term and returnable in another, it is a ſufficient Continuance from one Term to the other. 1 *Rol.* 484. *l.* 15.

So by an Imparlance from one Term to another.

By *Prece Partium*.

By *Dies datus*. 3 *Leo.* 14.

By *Curia adviſare vult*.

By *Vicecomes non miſit Brev'*. *Lut.* 290.

By *Jur' ponit' in Reſpectu*. *Yel.* 97.

So, if an Appeal, *&c.* before Juſtices of Gaol-Delivery be removed by *Certiorari* into *B. R.* by the Return of the *Certiorari* a Diſcontinuance is prevented, tho' it be *ſine Die*. *R.* 1 *Sal.* 62.

But in a Writ of Inquiry there cannot be a Continuance by *Jur' ponit' in Reſpectu*, but only by *Vicecomes non miſit Brev'*. *R. Yel.* 97. *Noy* 120.

(W) Diſcontinuance.

(W. 1.) What ſhall be.

IF the Continuances are not properly entred, the Suit is diſcontinued, which is Error.

[It is not a Diſcontinuance, tho' no Day is given to the Tenants in Dower to appear on the Return of the Writ of Inquiry, or it is aided by *ſtat.* 4 & 5 *Ann. c.* 16. *Dobſon* v. *Dobſon*, *P.* 7 *G.* 2. *B. R. H.* 19.]

(W. 2.) To Part.

So, if a Plea or Replication does not anſwer to the whole Matter of the Bar, or Declaration, it will be a Diſcontinuance for the Whole. *Vide Ante*, (E. 1.—F. 4.)

[In *Aſſumpſit* for three ſeveral Sums of 36 *l.* the Defendant pleads as to two ſeveral Sums of 36 *l.* it is a Diſcontinuance. *Woodward* v. *Robinſon*, *P.* 6 *G. Str.* 302.]

[But though a Plea doth not anſwer the whole Promiſe, and is therefore a naughty Plea, yet it is pleaded *quoad* the whole Promiſe, it will not make a Diſcontinuance; and *vice verſa*. *Ibid.*]

So, if a Demurrer or Iſſue does not go to the Whole. *Vide Ante*, (Q. 3.)

So, if a Day be given to the Plaintiff, but the *idem Dies* to the Defendant is omitted, it will be a Diſcontinuance. *R.* 1 *Rol.* 486. *l.* 30, 50.

Otherwiſe, where it is the King's Suit, and a Day given to the Defendant, but *idem Dies* to the Plaintiff is omitted; for the King is always preſent. *R.* 1 *Rol.* 487. *l.* 3. *Cro. Car.* 390.

If the Demandant omits in his Demand a Part contained in the Original, it is a Diſcontinuance for the Whole. 1 *Rol.* 487. *l.* 35.

So, if the Defendant vouches for Part, and ſays Nothing for the Reſidue. 1 *Rol.* 487. *l.* 40.

Or, if Proceſs on Voucher goes only to Parcel. 1 *Rol.* 487. *l.* 42.

So, if the Plea be in Bar, and after Replication, the Defendant demurs, and concludes in Abatement. 1 *Sal.* 4.

So, in *Replevin* on a Taking in two Places, if the Defendant anſwers only to one. *R.* 1 *Sal.* 94, 179.

So, if the Plaintiff in a Replication to a Plea in Abatement concludes with praying Debt and Damages. *R.* 1 *Sal.* 177. *Carth.* 138.

Or to a Plea in Abatement demurs in Bar. *R.* 1 *Sal.* 218.

So, if the Plaintiff demurs to the Defendant's Demurrer to his Declaration. *R.* 1 *Sal.* 219.

But if there be a Diſcontinuance, the Plaintiff need not take Judgment; for if he joins in Demurrer, the Court will give Judgment for him. *R.* 1 *Sal.* 4.

So, if there be an Iſſue for Part, and a Diſcontinuance for other Part, the Court will not give Judgment againſt the Plaintiff, till Iſſue tried; for the Diſcontinuance will be aided by a Verdict. 1 *Sal.* 218.

[So if the Plea does not cover the Whole, and Plaintiff replies, and Defendant demurs; though it is a Diſcontinuance, yet, if it be a Record of the ſame Term, Plaintiff may take Judgment by *Nil dicit* for what is uncovered. *Woodward* v. *Robinſon*, *P.* 6 *G. Str.* 302.]

So, in a Suit by the King, as, *Quo Warranto*, *&c.* if there is an Iſſue for Part, and Nothing ſaid to other Part, it will not be a Diſcontinuance; for the Attorney-General at any Time before Judgment may proceed, or enter a *Nolle proſequi*, for the other Part. *Hard.* 504.

(W. 3.) To One Perſon.

So, in an Action againſt ſeveral, a Diſcontinuance of the Proceſs againſt one Defendant is a Diſcontinuance to all. 1 *Rol.* 488. *l.* 10. *R. Cro. El.* 762.

So, in Error on an Outlawry for Felony, if a *Scire facias* goes againſt the mediate Lords, and there be a Continuance as to the King and Party, but not as to the Lords, it is a Diſcontinuance as to All. 1 *Rol.* 488. *l.* 15.

But, if there are ſeveral *Præcipes* in a Writ againſt ſeveral, a Diſcontinuance as to the Defendant in one *Præcipe* is no Diſcontinuance to the others. 1 *Rol.* 488. *l.* 25.

So, it will be a Diſcontinuance, tho' Day be given to him, who was not in Court: As, in an Inferior Court, if the Defendant be eſſoigned, and at the Day makes Default, and Day be given to him; upon his Default, to the next Court, it will be a Diſcontinuance, tho' Day be given to a ſubſequent Court by the Cuſtom of the Court; for there cannot be a Cuſtom contrary to the Law.

So, if Day be given to the Defendant by *Eſſoigne*, and *Idem Dies dat' Querenti* be omitted, it will be a Diſcontinuance. *R. Carth.* 172.

(W. 4.) The Effect of a Diſcontinuance.

A Diſcontinuance ſhall be Peremptory: As, in an Appeal. *Carth.* 56.

Diſcontinuance or Miſcontinuance of a Plea or Proceſs is Error. 1 *Rol.* 485. *l.* 20.

And Diſcontinuance of Proceſs ſhall not be aided by Appearance. 2 *Cro.* 284. *D. cont. Sho.* 319.

But Miſconveying of Proceſs, *viz.* of one Proceſs for another, or Miſreturn, may be aided by the Party's Appearance. 2 *Cro.* 284.

(W. 5.) When it ſhall be by Leave of the Court.

But the Plaintiff may diſcontinue his Suit by Leave of the Court.

[Rules ſhould be drawn up, "*have Leave* or *be at Liberty*" to diſcontinue, not "*ſhall* diſcontinue." *Barnes* 170.]

So, if Plea is not continued upon the Roll for a Year after Demurrer, the Court uſually grants a Diſcontinuance upon the Prayer of one Party, if the other does not pray the Contrary. 1 *Rol.* 487. *l.* 25.

Yet, if the other prays the Contrary, it is in the Diſcretion of the Court. 1 *Rol.* 487. *l.* 27.

[The Court may grant it after ſpecial Verdict argued, but will not do it in a hard Action. *Boucher* v. *Lawſon*, *H.* 9 *G.* 2. *B. R. H.* 194.]

[Plaintiff may diſcontinue, though Defendant has been arreſted a ſecond Time before Diſcontinuance. *Barnes* 169.]

[The Court will not permit an Executor to diſcontinue in any Caſe where he has *knowingly* brought his Action wrong, but on Payment of Coſts. *Harris* v. *Jones*, *H.* 4 *G.* 3. 3 *B. M.* 1451.]

[The Court will give Leave to Executor to diſcontinue without paying Coſts, after undertaking to try peremptorily, he having diſcovered there was a Deed againſt him; and being bound not to bring new Action without Leave. *Bennet* v. *Coker*, *M.* 7 *G.* 3. 4 *B. M.* 1927.]

After Rule for Judgment *Niſi*, the Plaintiff ſhall not be allowed to diſcontinue. 1 *Sal.* 179.

And, after Iſſue and a Verdict for him, the Plaintiff cannot diſcontinue without the Conſent of the Defendant; for if the Plaintiff will not enter up Judgment, the Defendant may. *R.* 1 *Rol.* 487. *l.* 25. *Sal.* 178.

Nor after Demurrer joined without Leave of the Court. 1 *Bul.* 217. Anciently. 1 *Sal.* 179.

But, after Demurrer argued, the Court have permitted a Diſcontinuance on Payment of Coſts, where there was a Miſpriſion in the Plaintiff in Point of Pleading. 2 *Lev.* 124, 209. 1 *Lev.* 191, 192. 3 *Lev.* 440.

And this in Eſcape. 1 *Sid.* 306.

[After Demurrer argued and allowed, on Payment of Coſts. *Butler* v. *Maliſſy*, *H.* 4 *G. Str.* 76. *Henderſon* v. *Williamſon*, *M.* 5 *G. Str.* 116.]

[After Judgment on Demurrer for Plaintiff, and Error brought, Plaintiff may diſcontinue on Coſts in Action and Error. *Barnes* 169.]

So, after a Special Verdict; for it is not complete, but is *de Gratia*. *Semb.* 1 *Sal.* 178.

So, after a Writ of Enquiry executed and returned, the Plaintiff cannot diſcontinue without the Defendant's Conſent, tho' it be not filed. *R. Sho.* 63. *Carth.* 86, 87.

[After Judgment on Demurrer in Replevin for Avowant, Plaintiff cannot diſcontinue. *Barnes* 169.]

[Whether Diſcontinuance may be entered without Leave? Q. *Barnes* 170.

[Plaintiff may enter *nil capiat per Breve* on a Plea in Abatement without Leave, but not in other Caſes. *Barnes* 257.]

[Plaintiff cannot move to diſcontinue, after Defendant has moved for Judgment as in Caſe of Nonſuit. *Barnes* 316.]

[Alſo whether Plaintiff in Replevin can Diſcontinue? Q. *Barnes* 171.]

(W. 6.) When it ſhall be aided.

By the *St.* 32 *H.* 8. 30. After Verdict, Judgment ſhall proceed notwithſtanding any Miſcontinuance, Diſcontinuance, Miſconveying of Proceſs, *&c.* *Vide Amendment*, (I.)

[This *Stat.* extends to Diſcontinuances *made* after Verdict; as if the original Proceſs is returnable at a common Return, and the *Scire facias* in Error is returnable at a Day certain, this Diſcontinuance is aided by the Statute. *Bern* v. *Bern*, *M.* 8 *G.* 2. *B. R. H.* 72.]

So by the *St.* 4 & 5 *An.* 16. Judgment by Confeſſion, *Nil dicit*, *non ſum informatus*, or Writ of Inquiry.

But before this Statute it was not aided upon a general Demurrer. *Vide ante*, (E. 1.)

Nor now upon a Special Demurrer.

[If after Judgment by Default on a Bill againſt an Attorney in *C. B.* where the Proceedings are on a Day certain, the Writ of Inquiry is returnable at a general Return, it is Miſcontinuance, and aided by the Statutes. *Launder* v. *Cripps*, *H.* 6 *G.* 2. *Str.* 947. *Vide Poſt*, 3 B. 16.]

(X) Nonſuit.

(X. 1.) What ſhall be.

IF the Demandant or Plaintiff does not appear at the Day when he is demandable, he ſhall be ſaid to be nonſuited, *quia non eſt proſecut'*, *&c.* *Co. Lit.* 138. *b.*

And this may be before the Defendant's Appearance: As, at the Return of the Writ. *Ibid.*

Or, if the Plaint is removed by *Pone*, at the Return of the *Pone*. *Yel.* 2.

So, at the Return of an Aſſize, if the Plaintiff is not ready to make Plaint, on Demand of the Tenant, he ſhall be nonſuited. *R. Sal.* 82.

And the Plaintiff may be demanded the Day of the Return of the Writ, tho' the Defendant not till *quarto Die poſt*. *R. Carth.* 172.

Or he may be nonſuited after Appearance: As, at any Day of Continuance; for the Plaintiff is then demandable, and is the firſt Agent. *Co. Lit.* 138. *b.*

[Rule to declare in *C. B.* muſt be in the Office where Plaintiff's Attorney practiſes. *Barnes* 312.]

[*Non pros.* for want of Declaration demanded in the Country, ſhall be ſet aſide. *Barnes* 311.]

[A Nonſuit at *Niſi prius* muſt be recorded by the Judge of *Niſi prius*, and cannot afterwards be recorded in Bank. *Gardener* v. *Davis*, *P.* 24 *G.* 2. 1 *Wilſ.* 301.]

So, at the Day of *Niſi prius*.

[None but the Defendant can demand the Plaintiff. If neither Plaintiff nor Defendant appear after Cauſe called, and Jury ſworn, the only Way is to diſcharge the Jury. *Arnold* v. *Johnſon*, *H.* 6 *G.* *Str.* 267. *Smith* v. *Whiſtler*, *T.* 9 *G.* 2. *B. R. H.* 305.]

[If it appears on the Record, that no Iſſue is joined, the Jury muſt be diſmiſſed. *Heath* v. *Walker*, *T.* 12 *G.* 2. *Str.* 1117.]

So, at the Day given by *Cur' adviſare vult* after Demurrer. *Co. Lit.* 139. *b.* 1 *Leo.* 105.

So, after an Interlocutory Judgment, as *quod computet*, *&c.* *Co. Lit.* 139. *b.*

But, by the *St.* 2 *H.* 4. 7. at the Day by *Cur. adviſare vult* after a Verdict, the Plaintiff cannot be nonſuited. *Ibid.*

[By *Stat.* 14 *G.* 2. *c.* 17. If Plaintiff neglects to bring Iſſue to Trial according to the Courſe of the Court, the Court, on Motion on Notice, ſhall give Judgment as in Caſe of Nonſuit, unleſs they allow farther Time, and Defendant to have Coſts as in Nonſuit.]

[But if in Action againſt two on a joint Promiſe, there is Judgment againſt one by Default; and on Plaintiff's neglecting to bring Iſſue joined by the other on to Trial, Rule is obtained for Judgment as in Caſe of a Nonſuit, yet Coſts cannot be taxed; for Plaintiff could not have been nonſuited on a Trial. *Weller* v. *Goyton*, *T.* 30 *&* 31 *G.* 2. 1 *B. M.* 358.]

[If Defendant has obtained a Rule for Coſts for not proceeding to Trial, he cannot afterwards move for Judgment as in Caſe of Nonſuit. *Barnes* 131, 314, 316.]

[On Motion for Judgment, as in Caſe of Nonſuit, Rule for Plaintiff to enter Iſſue; if he does not, Defendant may have *Non pros.*; if he enters it, the Roll muſt be produced, and Defendant may move for Nonſuit; if Court admits Cauſe, why Nonſuit ſhould not, *&c.* they appoint Day for Trial; on ſuch Motion, there muſt be Affidavit that the Cauſe is not tried. *Barnes* 313, 316.]

[Sickneſs of Plaintiff—Marriage of *feme* Plaintiff—that the Bankrupt did not attend Aſſignees, Plaintiffs—that material Witneſſes were ill—or if Record offered to be entered, though a little out of Time—ſufficient to prevent Judgment as of Nonſuit. *Barnes* 313, 314, 315, 316, 464.]

[Replevins and Actions *qui tam* are within the Statute. *Barnes* 315, 317.]

[In Replevin, if Plaintiff does not appear at Trial, but Defendant brings down Record, Nonſuit ſhall be entered, and not Verdict for Defendant; if it is, it ſhall be ſo amended at Defendant's Coſts. *Barnes* 458.]

[If Defendant has obtained a Rule for Judgment *Niſi*, the Court will not give Plaintiff Leave to amend his Declaration by ſtriking out Allegation, but Judgment ſhall be abſolute. *Barnes* 318.]

[Judgment as for Nonſuit ſhould be applied for the firſt Term after Plaintiff has not proceeded to Trial. *Barnes* 314.]

[Judgment as in Nonſuit may be moved for without Term's Notice, tho' no Proceedings in a Year. *Barnes* 308.]

[If Plaintiff was ready, but the Cauſe did not come on, becauſe the View was not returned by ſix Jurors, Judgment ſhall not be ſigned. *Barnes* 498.]

[Nonſuit ſhall not be ſet aſide, becauſe Plaintiff thought Defendant was miſtaken. *Barnes* 295.]

[If Plaintiff dies after Nonſuit, and before Day in Bank, it is not helped by the Statute, but is Error. *Barnes* 312.]

[If a Cauſe is tried by Proviſo, there muſt be a Rule given in the Office, *fiat Niſi prius per Proviſo ſi querens fecerit Defaltam*; and if there is not, and Plaintiff is nonſuited, the Nonſuit ſhall be ſet aſide. *Dodſon* v. *Taylor*, *M.* 10 *G.* 2. *Str.* 1055.]

[If

[If a Judge of Aſſize directs Nonſuit erroneouſly, there is no Remedy: *Barnes* 311.]

[Where a Judge at *Niſi prius* nonſuits Plaintiff and is miſtaken, the Court on Motion may ſet it aſide. *Sadler* v. *Evans*, *M* 7 *G.* 3. 4 *B. M.* 1984.]

(X. 2.) *Retraxit*, what ſhall be.

If the Demandant or Plaintiff acknowledges, *quod non vult ulterius proſequi*, this is a *Retraxit*. *Co. Lit.* 139. *a.* *R.* 2 *Cro.* 211. 3 *Leo.* 177.

So, at any Day when he appears in Court (for then he continues preſent there till a Day is given over and may be demanded) if, on Demand, he makes Default, this is a *Retraxit* in Contempt of the Court. *Co. Lit.* 139. *a.*

So, in Treſpaſs or other perſonal Action, a *Nolle proſequi* againſt one Defendant will be a Diſcharge to both. *R. Cro. El.* 762.

If a Defendant or Tenant, being preſent in Court, be demanded and makes Default, this is a Departure in Contempt of the Court. *Co. Lit.* 139. *a.*

But a *Retraxit* cannot be after Plaint before Declaration. *R. Dal.* 78.

Nor by Attorney, for he muſt be in Perſon. *Per* 2 *J.* 2 *Cro.* 211. 8 *Co.* 58. *b.*

[If there are ſeveral Defendants, and all found guilty, Plaintiff may enter *nolle proſequi* againſt any one; therefore, if in *Trover* againſt a Defendant Executor, and other Defendants not Executors, there is a Verdict againſt theſe, and the Executor is found Not guilty, Judgment ſhall not be arreſted, for Plaintiff may enter *nolle proſequi* as to him. *Dale* v. *Eyre*, *T.* 24 & 25 *G.* 2. 1 *Wilſ.* 306.]

(X. 3.) Who may be nonſuited.

The King cannot be nonſuited; for he is always in Court. *Co. Lit.* 139. *b.* *Sav.* 56.

But a Common Informer may be nonſuited. *Co. Lit.* 139. *b.*

And the Attorney-General may enter a *Nolle proſequi*, which has the Effect of a Nonſuit. *Co. Lit.* 139. *b.* *Hard.* 504.

And this after Iſſue joined. *Hard.* 504.

Or the Jury charged upon the Trial. *Dub.* 3 *Mod.* 117.

The Plaintiff may be nonſuited at any Day, when he is demandable. *Co. Lit.* 138. *b.*

After Interlocutory Judgment. *Sal.* 455.

If one Iſſue is found for the Plaintiff, he may be nonſuited as to other Iſſues or a Demurrer. *Sal.* 456.

If ſeveral Defendants plead ſeverally, he may enter a *Non pros* againſt one before the Record is ſent down to Trial. *Sal.* 457.

So, on the Return of a *Withernam*, the Plaintiff may be nonſuited; for tho' the *Replevin* and *Alias* have not any Day given to the Party (for they are *Vicontiel*) yet the *Pluries* has, and the Day of the Return is the Day for both Parties. *Sal.* 583.

But he cannot be nonſuited againſt one Defendant, after final Judgment againſt all. *Sal.* 455.

[In a *qui tam* Action, Judgment as in Caſe of a Nonſuit may be entered on a Rule to ſhew Cauſe. *Watſon* v. *Johnſon*, *P.* 25 *G.* 2. 1 *Wilſ.* 325.]

(X. 4.) When a Nonſuit is Peremptory.

After Nonſuit the Plaintiff may begin the ſame Suit again. *Co. Lit.* 139. *a.*

Tho' it be in Aſſiſe. 1 *Sal.* 82.

But not after a *Retraxit*. *Co. Lit.* 139. *a.*

So, in an Appeal of Murder, Robbery, &c. A Nonſuit after Appearance ſhall be peremptory *in Favor' Vitæ*. *Ibid.*

So, in an Appeal of *Mayhem*; for the Writ ſays, *felonice maihemavit*. *Ibid.*

So, in *Nativo habendo*, in Favour of Liberty. *Ibid.*

So,

So, in *Quare Impedit*, for thereon the Defendant has a Writ to the Biſhop. *Co. Lit.* 139. *a. Cont. per Dy.* within ſix Months. *Dal.* 81. *Acc.* 1 *Brownl.* 161. *R. Sal.* 559.

So in *Attaint. Co. Lit.* 139. *a.*

Otherwiſe, a Nonſuit before Appearance. *Co. Lit.* 139. *a.* 1 *Sal.* 64. *Carth.* 173.

As, if the Plaintiff in an Appeal declares by Attorney, and is demanded, and does not come into Court. 1 *Sal.* 64.

[If after Nonſuit on the Merits and Motion for new Trial denied, Plaintiff brings new Action in another Court, it will ſtay Proceedings till Coſts of the Nonſuit paid, for this is vexatious. *Melchart v. Halſey, H.* 11 *G.* 3. 3 *Wilſ.* 149.]

(X. 5.) When a Nonſuit of one of the Plaintiffs ſhall be a Nonſuit of the other.

So, generally, in perſonal Actions the Nonſuit of one Plaintiff is the Nonſuit of both. *Co. Lit.* 139. *a.*

So, in *Nativo habendo* and *Quid Juris clamat. Ibid.*

But in real or mixt Actions againſt ſeveral, if the Demandant is nonſuited as to one, he ſhall not be nonſuited as to all, for there ought to be a Summons and Severance. *Ibid.*

Nor in an *Audita Querelâ*; for it goes in Diſcharge. *Ibid.*

Nor in Error, Attaint, or *Scire facias* on real or mixt Actions; for they follow the Nature of the Actions, on which they are founded. *Ibid.*

So, a *Nolle proſequi* before Judgment againſt one ſhall be a Diſcharge to all. *R. Hob.* 70.

So after Judgment againſt All, if the Plaintiff enters a *Nolle proſequi* to one, it ſhall be a Diſcharge to all. *Hob.* 70.

So, in Treſpaſs againſt Several, if the Plaintiff is nonſuited before Declaration, there ſhall be only one Nonſuit as againſt all the Defendants; for though he may declare ſeverally, it ſhall not be preſumed till he does ſo. *R. Sal.* 455.

So, in Treſpaſs againſt Several, if one pleads *Not guilty*, and there is a Verdict and Judgment againſt him, and the other Defendants juſtify, the Plaintiff may enter a *Nolle proſequi* againſt thoſe who juſtified, and not diſcharge him, who pleaded Not Guilty, for by the Judgment the Suit was ended as to him. *R. Hob.* 70.

(Y) Judgment.

(Y. 1.) When it ſhall be upon Default.

IN real Actions, upon Default before Appearance, a *Grand Cape* iſſues, and if the Tenant does not appear thereon, there ſhall be Judgment againſt him. *Mod. Ca.* 4. *Vide ante*, (B. 11.)

On Default after Appearance in a Writ of Right, there ſhall be final Judgment.

So, in other real Actions, upon Default after a Verdict for the Demandant.

Or, on a Departure in Deſpight of the Court.

But, generally, in other real Actions, a *Petit Cape* iſſues before Judgment.

In Perſonal Actions, where an Outlawry lies, Proceſs iſſues againſt the Defendant till he appears, or is outlawed.

If Judgment be by Default, the Entry ſhall be *Ideo Conſid' quod recuperet* by Default.

Or, if the Default is entred, and afterwards *Ideo Conſ' quod recuperet*, without ſaying, *by Default*, it is ſufficient. *R.* 2 *Cro.* 36.

In perſonal Actions, after Appearance, if the Defendant does not plead, Judgment ſhall be entred up againſt him on *Nihil dicit. Vide ante*, (E. 42.)

Or the Attorney, to ſave him from Damages in a Writ of Deceit, may ſay *Quod non eſt informatus per Magiſtrum ſuum* of an Anſwer, and thereupon there ſhall be Judgment againſt the Defendant. *F. N. B.* 98. *I.*

(Y. 2.) When upon Confeſſion.

1 So a Defendant may confeſs the Action.

But after Iſſue and *Venire Facias*, the Defendant cannot by a *Relicta Verificatione* confeſs the Action without the Plaintiff's Conſent. *R.* 1 *Brownl.* 196.

So, if the Defendant, being Executor of his own Wrong, pleads that he has 10*l.* (which is more than the Debt demanded) which he retains to ſatisfy a Debt to himſelf, and has no Aſſets *ultra*, there ſhall be Judgment for the Plaintiff on the Defendant's Confeſſion; for an Executor of his own Wrong cannot retain for his own Debt, and then he confeſſes Aſſets to the Value of the Debt. *R. Yel.* 138. *Vide Ante*, (E. 42.)

So, in all Caſes, where the Defendant by his Plea confeſſes the Cauſe of Action, and offers a bad Juſtification. *Mod. Ca.* 10.

If the Defendant gives a Warrant of Attorney to confeſs the Action, the Judgment will be good, tho' the Defendant dies the ſame Day before Judgment ſigned. *R. Ray.* 18.

So, if the Defendant dies in the Vacation, and Judgment is entred as of the prior Term, before the Eſſoin Day of the next Term. 1 *Sal.* 87.

And, if the Warrant be general, it may be confeſſed in any Term. 1 *Mod.* 1.

So the Warrant will be good, tho' the Attorney be afterwards made a Knight. *Per Brown, Ow.* 31.

If the Warrant be by a Woman, who afterwards takes Huſband, the Bill may be filed, and Judgment entred againſt both. *Sho.* 91. *cont.* 1 *Sal.* 117, 399.

So, if the Warrant is to acknowledge Judgment to a Woman, who marries, it is no Countermand. *R.* 1 *Sal.* 117.

[If Warrant of Attorney is given to confeſs Judgment to a *Feme ſole*, who afterwards marries, and Judgment is entered up by Husband and Wife, it is irregular, and muſt be ſet aſide, if it is ſo entered up without Leave of the Court. *Marder* v. *Lee*, *P.* 4 *G.* 3. 3 *B. M.* 1469.]

If the Warrant is by a Woman, as Sole, it ſhall not be avoided for that ſhe is *Covert*, without a Writ of Error. 1 *Sal.* 400.

If the Warrant is given on an Arreſt, and the Defendant countermands it, before Judgment confeſſed, yet the Court will protect the Attorney, if he pleads *Non ſum informatus*, whereby Judgment may be entred up againſt the Defendant. *Lat.* 8.

So, if after Warrant given the Plaintiff tears off the Seal, an Attachment lies. 1 *Vent.* 3.

If a Warrant be to acknowledge Judgment on an Agreement to ſtay the Execution for a Year, it muſt be in Writing. *Mod. Ca.* 14.

And if the Plaintiff uſes the Judgment contrary to his Agreement, the Court will avoid the Judgment. 1 *Sal.* 400.

So, if the Agreement is to ſtay Execution and he brings Debt, it will be a Breach. *Sal.* 596.

Otherwiſe, if the Agreement was ſubſequent to the Judgment given. 1 *Sal.* 400.

But the Warrant muſt be ſtrictly purſued, and therefore, if it is to confeſs Judgment in *Trinity* Term, without more, it cannot be done in any other Term. 1 *Mod.* 1.

So, generally, the Defendant's Death is a Countermand of the Authority. *D.* 1 *Vent.* 310. 1 *Sal.* 87.

[If Defendant dies in Term-time, Judgment may be entered after his Death, that ſame Term. *Fuller* v. *Jocelyn*, *M.* 4 *G.* 2. *Str.* 882. *Fuller* v. *Johnſon*, *M.* 9 *G.* 2. *B. R. H.* 158.]

[Judgment cannot be entered on a Warrant of Attorney, after Plaintiff's Death. *Wild* v. *Sands*, *M.* 13 *G.* *Str.* 718.]

[If

[If Judgment on Warrant of Attorney is entered after Defendant's Death, the Court will not ſet it aſide, tho'. they would not make a Rule for it. *Barnes* 270.]

[If a Rule is made to enter up Judgment on an old Warrant of Attorney, on Affidavit that the Party is alive, and it afterwards appears that he died ſome Hours before, the Court will not diſcharge it. *Chancey* v. *Needham*, *M.* 11 *G.* 2. *Str.* 1081. *Andr.* 53.]

[If there is Warrant of Attorney to confeſs Judgment to two, and one dies before Judgment entered, and it appears that it was given to indemnify them againſt a Bond entered into by them in Behalf of Defendant, the Court will give Leave to the Survivor to enter up Judgment. *Todd* v. *Dodd*, *M.* 25 *G.* 2. 1 *Wilſ.* 312.]

[In Common, the Court will not do it. *Barnes* 45.]

[Warrant from two, one dies, Leave to enter againſt the Survivor. *Barnes* 53.]

[Satisfaction may be entered *nunc pro tunc* on a Warrant, Plaintiff being dead, and his Adminiſtrator a Lunatick. *Barnes* 258.]

[If Judgment at the Suit of an Executor is entered up, as of a Term in Teſtator's Life-time, it ſhall be ſet aſide. *Gainſborough* v. *Follyard*, *M.* 13 *G.* 2. *Str.* 1121.]

[On Warrant to enter, at the Suit of *A.* his Heirs, Executors, *&c.* Executor ſhall have Leave to enter. *Barnes* 44.]

[If Judgment is neglected to be entered on the Roll, and the Roll is loſt, the Court will order the Clerk of the Judgments to ſign a new Roll. *Douglas* v. *Yellop*, *H.* 32 *G.* 2. 2 *B. M.* 722.]

[The Clerk of the Judgments, having received his Fees, Is liable to an Action by a Purchaſer become liable to a Judgment which he did not find entered up; the Attorney is liable to the Clerk of the Judgments. *Ibid.*]

[On Warrant from one to ten Years old, Leave may be given by Treaſury-Rule: above ten, Motion in Court; above twenty, Rule to ſhew Cauſe. *Barnes* 47, 41.]

[Judgment may be entered on an old Warrant, on Affidavit of Execution, *&c.* and that Defendant was alive in *Ireland* two Months before. *Barnes* 53.]

[Or in *Jamaica* four Months before. *Barnes* 256.]

[Leave may be granted if Plaintiff is lunatick, on Affidavit of the Perſon who has received the Intereſt. *Barnes* 42.]

[The Court will not give Leave to enter Judgment on an old Warrant, on an Affidavit ſworn in *Ireland* before an *Iriſh* Commiſſioner. *Sibthorpe* v. *Adams*, *C.B. T.* 10 *G.* 2. *Barnes* 40.]

So, if a Man under Arreſt confeſſes Judgment, it will be irregular, if an Attorney of *B.R.* or *C.B.* is not preſent. *Mod. Ca.* 85. 1 *Sal.* 402.

[The Preſence of Attorney of *C.B.* at executing (in Cuſtody) Warrant to enter up Judgment in *B.R.* is ſufficient. *Bland* v. *Pakenham*, *M.* 9 *G.* *Str.* 530. *Barnes* 44: But he muſt be Attorney for Defendant. *General Rule*, *P.* 4 *G.* 2. *Str.* 902: No Excuſe can be allowed againſt this Rule. *Per Hardwicke* C. J. *Woodin* v. *Colledge*, *M.* 9 *G.* 2. *B. R. H.* 177. Nor tho' the Warrant is executed in a foreign Country. *Fitzgerald* v. *Plunket*, *H.* 19 *G.* 2. *Str.* 1247.]

[But Defendant in Execution paying Part of the Debt, may give Warrant of Attorney to confeſs new Judgment for the Reſt, tho' no Attorney is preſent, both the ſtanding Rules of Court of *Car.* 2. and 4 *G.* 2. intending only to Arreſts on *meſne Proceſs*. *Watkins* v. *Hanbury*, *H.* 19 *G.* 2. *Str.* 1245.]

[But this Rule extends only to the particular Cauſe whereupon Defendant is in Cuſtody, and not to giving Warrants of Attorney to confeſs Judgment in other Actions. *Holcombe* v. *Wade*, *M.* 6 *G.* 3. 3 *B. M.* 1792.]

[If Defendant practiſes as an Attorney, no other need be preſent, but Plaintiff an Attorney is not ſufficient. *Barnes* 37.]

[Attorney's Clerk is not ſufficient. *Barnes* 42.]

If he is arreſted by Proceſs of an inferior Court, and confeſſes Judgment in a Court at *Weſtminſter*. *Mod. Ca.* 85. 1 *Sal.* 402.

So, if he is discharged only in Appearance, or apprehends himself not discharged. *Mod. Ca.* 85.

So, if Confession of Judgment is obtained by Practice, tho' an Attorney is present. *Ibid.*

But this does not extend to a Warrant of Attorney to give Judgment, as a Security to *A.* and not to the Plaintiff. 5 *Mod.* 144.

But *B. R.* do not examine Warrants for Judgment in *C. B.* or *e contra.* 1 *Sal.* 402.

[If Defendant under Arrest on a *Latitat*, gives Warrant of Attorney to confess Judgment in *C. B.* no Attorney but Plaintiff's being present, *B. R.* cannot set aside the Judgment, but will grant Attachment against Plaintiff and his Attorney, till Satisfaction is entered, or Judgment set aside, with Costs. *Woodin* v. *Colledge*, *M.* 9 *G.* 2. *B. R. H.* 177.]

So a Judgment, tho' regular, shall be quashed on Payment of Costs, when a Trial has not been lost. 1 *Sal.* 402.

And Regularity shall not be examined into, after Error brought. *Ibid.*

[On Motion to set aside Judgment, the Warrant being obtained on usurious Contract, (which is not pleadable to *Sci. fa.*) Court will direct Issue to try Fact. *Barnes* 277.]

[If Defendant pleads Not guilty, and also by his Plea confesses the Trespass, and justifies under a Custom, upon which a Verdict is found for him, yet if the Custom is void in Law, the Court shall give Judgment for Plaintiff, award Writ of Inquiry of Damages, and give final Judgment for Damages and Costs, *nullo respectu habito verdicto.* As to Not guilty, Defendant *eat sine Die.* On Error from *C. B.* Judgment affirmed unanimously in *B. R.* *Wilkes* v. *Broadbent*, *P.* 17 *G.* 2. *Wilf.* 63. *Barnes* 267.]

(Y. 3.) When upon the Declaration, Plea, &c.

When there shall be Judgment on the Declaration, Plea, or Replication. *Vide Ante*, (M. 1, 2, 3.)

When Error in a Judgment shall be amended, *Vide Amendment*, (R.)

When a Motion shall be allowed in Arrest of Judgment, *Vide Ante*, (S. 48.)

If Judgment is irregularly signed or obtained, the Court will set it aside.

But not because the Attorney appeared without Warrant. *Mod. Ca.* 16.

[The Court will set aside a Judgment, on putting the Plaintiff in as good a Condition. *Fox* v. *Glass*, *H.* 2 *G.* 2. *Str.* 823. (The leading Case in *B. R.*)]

[If Defendant is not served with Process, but is served with Declaration, and Judgment is signed, it shall not be set aside; for Defendant should have come in and taken Advantage of it. *Matthews* v. *Lucas*, *P.* 9 *G.* 2 *B. R. H.* 240.]

[After Error brought, the Court will not aside Judgment for Irregularity; for it admits a Judgment, and is a Waiver of the Irregularity. *Keate* v. *Watson*, *M.* 12 *G.* 2. *Andr.* 296.]

[So is taking out a Rule to be present at Taxation of Costs. *Semb. Ibid.*]

[Judgment shall not be set aside for a small Mistake; (as if Declaration is intitled of the 19th of *G.* 2. instead of the 18th and 19th.) *Johnson* v. *Bridgewater*, *T.* 18 *G.* 2. *Wilf.* 104.]

[If Defendant pleads sham Plea, and Plaintiff obtains the common Rule that Defendant shall plead the Morrow, and such Plea shall not be waived, and Defendant takes no Notice of it, and Plaintiff signs Judgment, it is irregular, and shall be set aside; for the first Plea stands. *Webb* v. *Holt*, *T.* 18 *G.* 2. *Str.* 1234.]

[In *Assumpsit*, if Defendant pleads General Issue, and Statute of Limitations; and Issue found against him, and on the special Plea, Replication, Rejoinder, Surrejoinder, Demurrer thereto by Defendant, in which Plaintiff joins, he needs not give Notice of making it a *Concilium*, or putting it in the Paper, and Judgment shall not be set aside for want of it; not on Payment of Costs, and offer to waive Error. *Forbes* v. *Ld. Middleton*, *M.* 19 *G.* 2. *Str.* 1242.]

[If

[If Defendant pleads *Non assumpsit*, and Statute of Limitations, and delivers it to Plaintiff, who makes up Issue, and delivers it with Notice of Trial to Defendant, who pays for it, and then Plaintiff pays Clerk of the Papers his Fees, makes up Record, and goes to Trial; the Court will not set it aside, tho' Defendant makes no Defence, for he was in the first Fault, in not leaving the Pleas in the Office. *Thompson* v. *Tiller*, *P.* 20 *G.* 2. *Str.* 1266.]

(Z) Writ of Inquiry.

(Z. 1.) When necessary.

If there be Judgment by Default or Confession, and the Certainty of the Demand appears upon Record, the Court may assess Damages without awarding a Writ of Inquiry, if they will. 2 *Sand.* 107.

So, if there be Judgment for the Plaintiff on Demurrer.

As is the usual Course in Debt. 1 *Rol.* 579. *l.* 5. *R.* 2 *Sand.* 107. Tho' it be Debt upon a Judgment. 1 *Sid.* 442.

So, it may be in Trespass, where the Trespass is not denied: As, upon a Judgment by *Nil dicit*, *Non sum informatus*, *&c.* *Yel.* 152. 1 *Rol.* 573. *l.* 10.

So, upon a *Recordari*, for Cattle taken, *&c.* 1 *Rol.* 571. *l.* 40.

So, for a Defendant in Replevin, who avows for Rent. *R.* 3 *Leo.* 213.

And, tho' the Defendant will not consent to it, it does not signify, if the Plaintiff consents. 2 *Sand.* 107.

Tho' the Defendant is Executor, and has no Assets. *R.* 2 *Sand.* 107. *Semb. Skin.* 561.

Yet, if the Plaintiff does not consent, there may be a Writ of Inquiry. 2 *Sand.* 107.

But where the Demand is not certain upon the Record, a Writ of Inquiry must issue, as, in Trespass, where the Defendant pleads *Not guilty*. *Yel.* 152.

In Trespass on the Case, Replevin, *&c.* *Pr. Reg.* 558. *R.* 3 *Leo.* 213. *R. Lut.* 213, 211.

So, on Judgment affirmed on a Writ of Error, a Writ of Inquiry may issue, if it would lie on the first Judgment. *Pr. Reg.* 559.

In Debt for such Goods, or the Value, a Writ of Inquiry shall issue to inquire the Value. *R.* 11 *H.* 7. 5. *b.* *R. Gro. El.* 536.

Yet, where Issue is joined, a Writ of Inquiry never issues; for the Jury, which tries the Issue, must assess the Damages, and the Omission cannot be supplied by a Writ of Inquiry; for then, if they should be excessive, the Defendant will lose the Benefit of his Attaint. *R.* 10 *Co.* 119. *a.* 2 *Rol.* 722. *l.* 10. *R.* 11 *Co.* 6. *a.* *Heydon* 56. *a.* *Bentham.* *Vide Damages*, (E. 1, 2.)

[If there are several Breaches, some confessed, others denied, and *Venire tam*, *&c.* *quam*, *&c.* and the Jury omits to inquire of the Damages on the Breach confessed, Writ of Inquiry may issue. *Barnes* 228.]

So, where one Defendant pleads to Issue, and the other makes Default, a Writ of Inquiry is awarded to avoid a Discontinuance, but does not issue; for the Jury, which tries the Issue, shall assess the Damages. 1 *Leo.* 141. *R.* 11 *Co.* 6. *a.* *Heydon.*

So, in Detinue, if the Jury find Damages, but not the Value of the Goods, it cannot be supplied. *Sal.* 206. *cont.* 5 *Mod.* 76. *Skin.* 595.

Yet there may be a Writ of Inquiry tho' Issue is joined, where the Plaintiff is nonsuited. 5 *Mod.* 77, 118. 1 *Sal.* 205. *Skin.* 595.

[In an Action against an Overseer of the Poor, if there is a Verdict for him, and no Damages assessed, a Writ of Inquiry shall issue. *Valentine* v. *Fawcett*, *T.* 8 *G.* 2. *Str.* 1021. And a Suggestion shall be entered on the Roll for that Purpose. *B. R. H.* 139.]

[The Want of a Writ of Inquiry is aided by the Statute of Jeofails. *Mallory* v. *Jennings*, *M.* 4 *G.* 2. *Str.* 878.]

(Z. 2.) How it ſhall be executed.

If a Writ of Inquiry iſſues, Notice of the executing it ſhall be given to the Defendant, if he lives within 40 Miles of *London* or *Middleſex*, and the Inquiry is there, eight Days excluſive of the Day of Notice. *Per Rule* 1654. *Mills* 29. *Mod. Ca.* 146.

If the Defendant lives above 40 Miles from *London*, 14 Days Notice ſhall be given excluſive. *Mills* 29. *Mod. Ca.* 146.

[Tho' Defendant is an Attorney. *Barnes* 264.]

And in all Writs of Inquiry *in Pais*, or Inquiry in Dower or Waſte, there ſhall be eight Days Notice excluſive. *Mills* 30. Tho' it be 40 Miles Diſtance, eight Days Notice is ſufficient. *Mod. Ca.* 146.

So Notice ſhall be given in a *Scire Fieri* Inquiry. 2 *Mod. Ca.* 366.

[There muſt be the ſame Notice of executing a *Scire fieri* Writ of Inquiry, as a common Writ of Inquiry. *Biron* v. *Philips*, *M.* 6 *G. Str.* 235. *Stead* v. *Lateward*, *P.* 11 *G. Str.* 623.] *Barnes* 304.]

[Where a Term's Notice of Trial is required, there muſt, at the ſame Diſtance of Time, be like Notice of executing Writ of Inquiry. *Peyton* v. *Burdus*, *M.* 12 *G.* 2. *Str.* 1100.]

[If no Proceedings within 12 Months, a Term's Notice muſt be given. *Barnes* 291, 294, 304.]

[Notice given in the Country is good. *Barnes* 305.]

[If Plaintiff's Name is miſtaken in Notice, Inquiry ſhall be ſet aſide. *Barnes* 310.]

[Notice to execute before Judge of Aſſize muſt be general, not on a Day certain. *Barnes* 135.]

[Notice is bad, if the Hour is not ſpecified, tho' Defendant ſaid he would make no Defence; and the Time between Hour and Hour muſt not be above two. It muſt expreſs the Name of the Houſe, the County, Town and Street. Two Days at leaſt given to Attorney, not to Defendant, if Appearance. Notice for eleven is good, if executed before twelve. *Barnes* 293, 295, 295, 296, 297, 299, 300, 300, 301, 302, 309, 311.]

[If there is Notice to execute Writ of Inquiry *by ten o' Clock*, and no Defence made, the Court will ſet it aſide for Uncertainty. *Iſon* v. *Fowen*, *M.* 14 *G.* 2. *Str.* 1142.]

[Irregularities in Notice, or in Appointment of Deputy, are cured by Defendant's making Defence. *Barnes* 233, 309, 413.]

A Writ of Inquiry, and other Inqueſts of Office, may be executed before a greater or leſs Number than twelve. *F. N. B.* 107. *C. R.* 2 *Rol.* 673. *l.* 53. *Cro. Car.* 414. [For no Attaint lies. *Cheſter* v. *Crawley*, *M.* 15 *G.* 2. *Str.* 1159.]

[So Award of Writ of Inquiry, to inquire by the Oaths of honeſt Men, omitting *twelve*, is good. *Moore* v. *Paine*, *T.* 9 *G.* 2. *B. R. H.* 288.]

And there ſhall be no Challenge to the Array or *Polls*. 2 *H.* 4. 2. *b. Per Holt*, *Mod. Ca.* 43.

Except in a Writ of Inquiry for Waſte. *Co. Lit.* 158. *b. Ddl.* 9.

And the Inquiry ſhall be by any Jurors of the County; and therefore Default of a *Venue* is not material after a Writ of Inquiry awarded. *R. Lut.* 237.

If a Jury don't appear, the Plaintiff may have an *Alias* and *Pluries*, but cannot have a *Habeas Corpus*; for it is Error. *R. Yel.* 130.

If the Inqueſt appear, it cannot be continued *per ponit' in Reſpect'*, but only by *Vicecomes non miſit Breve*. *R. Yel.* 97.

[It may be adjourned after entred upon, like a Coroner's Inqueſt, or Commiſſion of Lunacy, it being but an Inqueſt of Office. *Coleman* v. *Mawby*, *H.* 3 *G.* 2. *Str.* 853.]

The Plaintiff ought to appear on every Continuance of the Jury in *B. R.* or an inferior Court, otherwiſe it is Error. *R. Yel.* 97. *Vide Ante*, (V. 1, &c.)

But

But no Day is given to the Defendant; for he is out of Court. *Yel.* 97. *R.* 1 *Sid.* 16.

If it be executed on the Return-Day before the Court riſes, it is ſufficient. *R. Cro. El.* 761. 468.

[The Execution of a Writ of Inquiry on a *Sunday* is void, and the Court are bound to take Notice of it, without being ſpecially aſſigned for Error. *Hoyle* v. *Lord Cornwallis*, *T.* 6 *G. Str.* 387.]

If a Writ of Inquiry be returned, executed, it is ſufficient, tho' it is not ſaid, under the Seal of the Sheriff and Jurors. *R.* 1 *Rol.* 408.

If it be *per Sacramentum* 12 *proborum et legalium*, omitting *Hominum*. *R.* 1 *Rol.* 408.

[*Non aſſumpſit*, and *Non aſſumpſit infra ſex Annos* pleaded, an Original replied, and on *Nul tiel Record*, Judgment for Plaintiff; he cannot execute Writ of Inquiry till Trial of the other Plea. *Barnes* 229.]

It cannot be executed, till Judgment on Demurrer is actually ſigned. *Barnes* 229.

On *nul tiel Record* replied, Plaintiff may give Notice of Inquiry on the Back of his Replication. *Barnes* 249.]

(Z. 3.) What Proof neceſſary.

If a Writ of Inquiry iſſues upon Confeſſion of the Action, in Treſpaſs for taking Goods, the Plaintiff need not prove the Property of the Goods, but only the Value. *R. Yel.* 152. *Dal.* 9.

[On a Writ of Inquiry on Judgment by Default, Defendant ſhall not give Evidence of Fraud in the Plaintiff, for he has admitted the Contract to be as Plaintiff has declared. *Eaſt-India Company* v. *Glover*, *M.* 11 *G. Str.* 612.]

So, though the Judgment be on *Non ſum informatus*, or *Nil dicit*; for by the Judgment *Quod Querens recuperet*, the Property is affirmed. *R. Yel.* 152. 2 *Cro.* 220.

But in Inquiry of Waſt, the Jury may find *no Waſt*, if the Waſt be not confeſſed. *Dal.* 9.

And, in *Indebitatus aſſumpſit*, if the Judgment be by *Nil dicit*, or *Non ſum informatus*, the Plaintiff muſt prove his Debt. *R.* 1 *Vent.* 347.

[A Promiſſory Note ſet out in the Declaration needs not be proved, but it ſhould be produced to ſee if any Money is indorſed as paid off. *Bevis* v. *Lindſell*, *H.* 14 *G.* 2. *Str.* 1149. *Anon. H.* 11 *G.* 3. 3 *Wills.* 155.]

[Note muſt be produced and proved. and if indorſed, the Indorſement proved; not pleading is not ſufficient Admiſſion. *Barnes* 233, 234.]

So, on a Writ of Inquiry upon Judgment againſt an Executor or Adminiſtrator by Default, he ſhall not give in Evidence *No Aſſets*. *Mod. Ca.* 308.

A Writ of Inquiry ſhall not be for more than is contained in the Judgment: As, in Treſpaſs for breaking a Houſe, and taking and carrying away Goods, if a Demurrer is joined on breaking the Houſe and taking the Goods only, and by Writ of Inquiry Damages are found for the Carrying away alſo, it is Error; for there was a Diſcontinuance as to the Carrying away. *R. Yel.* 5.

So, if the Writ of Inquiry recites a Judgment for 400 *l.* where it was only for 40 *l.* tho' the Bill was 400 *l.* it is Error. *R.* 2 *Cro.* 294.

[If Damages are given for Neceſſaries provided after the Writ of Inquiry executed, or after the Action commenced, it is Error. *Baker* v. *Bache*, P. 11 *G.* 2 *Ld. Raym.* 1382.]

[The Jury may give Intereſt on Note, Bill of Exchange, and Money lent. *Per curiam*. And on *in Deb. aſſump.* for Goods ſold. *Per Mountague* C. B. *Diſſent.* two B. *Vernon* v. *Cholmondely*. *M.* 1722. *Bunb.* 119. *Barnes* 228.]

[But not on Balance of Account. *Barnes* 228.]

(Z. 4.) Before whom it ſhall be executed.

[The Under-Sheriff cannot appoint a Deputy to ſee Execution of Inquiry; if he does, the Court will grant Attachment. *Barnes* 231.]

[But if Deputy is appointed under Seal of Sheriff's Office, it is well. *Barnes* 232.]

[Verba

[Verbal Appointment bad; it ſhould be under Hand and Seal. *Barnes* 413.]

[If Defendant, an Eſquire, deſires Inquiry to be executed before Judge at next Aſſize, the Court will grant it without Affidavit. *Barnes* 235.]

So, if a Writ of Inquiry be executed before him, who has no Authority, it is Error: As, in an inferior Court, if it is directed to the *Serjeant at Mace*, and is executed before the Mayor, who is Judge of the Court. *R. Yel.* 69.

So, if a *Capias ad ſatisfaciendum* be iſſued before the Writ of Inquiry is returned, it is Error. *R. Yel.* 71.

If a Writ of Inquiry is erroneous, it ſhall not be amended; but the Plaintiff may have another Writ. *Pr. Reg.* 559.

But Miſentry of a Clerk ſhall be amended. *R.* 3 *Mod.* 112. *R.* 2 *Cro.* 372. *R. Mod. Ca.* 306. *Adm.* 1 *Rol.* 408. *Vide Amendment*, (S.)

(Z. 5.) When it may be quaſhed.

[A Motion to ſet aſide an Inquiſition may be made at any Time, before final Judgment ſigned. *Denny* v. *Trapnell*, *P.* 8 *G.* 3. 2 *Wilſ.* 378.]

A Writ of Inquiry may be quaſhed after Execution, for Miſdemeanor in the Plaintiff. 2 *Leo.* 214.

Or, if there was not a regular Notice. *Sti. Pr. Reg.* 558.

So for Miſdemeanor in the Sheriff, as, if he refuſes to examine a Witneſs. *Pr. Reg.* 559.

If he permits the Plaintiff himſelf to be the only Witneſs. *Per C. B. M.* 7 *Ann.*

[If it is taken before two Perſons appointed Under-Sheriffs extraordinary, it ſhall be ſet aſide. *Denny* v. *Trapnell P.* 8 *G.* 3. 2 *Wilſ.* 378.]

[So if it is taken before an Under-Sheriff extraordinary, when the ſworn Under-Sheriff lives in the ſame Town. *Ibid.*]

So, if the Damages againſt the Defendant are exceſſive. 2 *Leo.* 214. 3 *Leo.* 177.

[As if in Dower one third of the Value of the Land be given without deducting Reprizes; and for Coſts, the Attorney's Bill. *Barnes* 234.]

[Two hundred and fifty Pounds deemed exceſſive for twenty-ſix Days falſe Impriſonment, and Inquiry ſet aſide for that Cauſe. *Barnes* 233.]

[But on 100 *l.* Damages given againſt Cuſtomhouſe Officers for entring and ſearching Plaintiff's Houſe with a Writ of Aſſiſtance without a Conſtable, in the Day Time; Court would not ſet it aſide for exceſſive Damages. *Bruce* v. *Rawlins*. *P.* 10 *G.* 3. 3 *Wilſ.* 61.]

Or for Time ſubſequent to the Action brought. 2 *Mod. Ca.* 349.

But it ſhall not be quaſhed at the Requeſt of the Plaintiff, for that the Damages are too ſmall. *R.* 2 *Leo.* 214. 3 *Leo.* 177. *Sal.* 647.

[If the Jury find *no* Damages, it may be quaſhed, but not for Smallneſs. *Barnes.* 230.]

[After no Damages found, a ſpecial Inquiry cannot iſſue without Leave. *Barnes* 231.]

[It may be ſet aſide for Smallneſs of Damages, occaſioned by Sheriff's admitting improper Evidence for Defendant. *Barnes* 448.]

[If the Witneſs Plaintiff thought could prove his Demand declines it, and the Sheriff refuſes to adjourn, whereby Plaintiff has but one Penny Damages for a large Demand, the Court will ſet aſide the Verdict. *Markam* v. *Middleton*, *T.* 19 *G.* 2. *Str.* 1259.]

[If Plaintiff is ſurpriſed with a Defence, and not prepared to prove his whole Demand, the Court will ſet it aſide. *Hall* v. *Stone*, *P.* 8 *G.* *Str.* 515.]

[On a Contract for Stock between *A.* and *B.* they depoſit 200 *l.* each in Defendant's Hands; *B.* does not perform, and *A.* ſues for Depoſit, and had Judgment on Demurrer, and Writ of Inquiry; but the Jury, on a Notion that the Depoſitant could not pay the Money without Conſent of both Parties, gave one Penny Damages, which the Court ſet aſide; for the Rule of not ſetting aſide

Verdicts for Smallneſs of Damages does not extend to a Caſe where the Jury miſtake in Point of Law. *Woodford* v. *Eades*, *P.* 7 *G. Str.* 425.]

Yet where the Covenant is for a certain Sum, whereon Debt might be brought, a New Writ of Inquiry ſhall be awarded, if the whole Debt is not found. *Sal.* 647. *Per C. B. Tr.* 4 *Geo.* 2 *Mod. Ca.* 197, 213.

[It ſhall not be ſet aſide, becauſe returnable on a Return-Day, inſtead of Day certain. *Barnes* 230.]

[When executed, it is good, tho' the Day and Year are omitted in the *Teſte* of the Writ. *Barnes* 425.]

[It ſhall not be ſet aſide, becauſe taken in the Name of Plaintiff, who became Bankrupt after Inquiry awarded, but before it is executed. *Bibbins* v. *Mantel*, *M.* 8 *G.* 3. 2 *Wilſ.* 358.]

Nor becauſe it has been altered, if reſealed and not uſed before. *Barnes* 232.]

(*Z* 6.) When there ſhall be Judgment upon it.

After a Writ of Inquiry executed, there muſt be four Days excluſive before the Plaintiff can ſign the Judgment. *R.* 1 *Sal.* 399.

Tho' the Writ was executed the laſt Day of the Term. *Sal.* 399.

So the Plaintiff may give a Rule for ſigning Judgment, *niſi Cauſa* within four Days. *Sal.* 399.

(2 A) Proceeding and Pleading in particular Actions.

PLEADING in an Action by or againſt an Attorny. *Vide Attorny*, (B. 21, 22.)

By or againſt an Adminiſtrator. *Vide Poſt*, (2 D. 10, &c.)

(2 A. 1.) In Actions by and againſt Huſband and Wife.

(2 A. 1.) In an Action by Huſband and Wife.

When Huſband and Wife ſhould join in an Action by or againſt them, or when One ſhall ſue or be ſued alone. *Vide Baron and Feme*, (V, W, X.)

If a Woman ſues or is ſued alone, when ſhe is *Covert*, or a Huſband, when the Wife ought to join or be joined, the Writ ſhall abate. *Vide Abatement*, (E. 6.—F. 2.—F. 7.)

In an Action by Huſband and Wife, it is good, if the Huſband and Wife appear in proper Perſon; for tho' the Huſband has no Privilege when his Wife is joined, yet any One may ſue in Perſon. *R. Cro. El.* 537.

If Huſband and Wife, ſeiſed for their Lives, and to the Heirs of the Huſband, alledge a Preſcription in both; for tho' ſhe has only for Life, ſhe was ſeiſed jointly with her Huſband who had the *Fee*. *R. Cro. El.* 112.

So, in *Aſſumpſit* by Huſband and Wife *ut Adminiſtratrix*, the Declaration may ſay that the Money was received *ad Uſum prædict*. Huſband and Wife, *ut Adminiſtratrix*. *R.* 4 *Mod.* 376.

So, it is ſufficient to ſay *ad reſpondend'* Huſband and Wife, *cui Adminiſtratio*, *&c.* for *cui* refers to the Wife, who is laſt named. *R. Lat.* 212.

If the Declaration alledges a Seiſin in Right of the Wife, it ought to alledge that both are ſeiſed (and not the Huſband only) in Right of the Wife. *R. Lut.* 1425. *Per Lut. D. Lut.* 1596.

And, if the Seiſin is for the Life of the Wife, it ought regularly to be averred that the Wife is alive. *Lut.* 1596.

But a Declaration by Huſband and Wife is not good, if it alledges that the Huſband and Wife *poſſeſſionat' fuerunt de Bonis*, *&c.* in Trover. *Semb.* 1 *Sal.* 114.

So, if in Treſpaſs it alledges Battery of both, for the Wife ought not to be joined for a Battery of the Huſband. 1 *Rol.* 782. *l.* 10.

If in Breach it be alledged, that he did not execute to the Wife while Sole, nor to the Husband and Wife since Marriage, without saying *aut eorum alteri*. *R. Lut.* 415.

If in Trespass, *Assumpsit*, &c. where the Wife need not join, it is alledged *ad Dampnum ipsorum*. *R.* 2 *Cro.* 473. *R.* 2 *Cro.* 644. *R.* 1 *Sal.* 114. *R.* 2 *Rol.* 250.

So *Assumpsit* for Money lent by Husband and Wife *ad Dampnum ipsorum* is bad. 12 *Mod. Ca.* 341.

If, in Trover, the Conversion is alledged *ad Dampnum ipsorum*. *R.* 1 *Sal.* 114.

If, in Trespass by them, it be, *Quare Clausum fregit et Herbam suam*, &c.

If, in Battery by them for a Battery of the Husband and Wife, it is alledged *ad Damnum ipsorum*. *R. Mod. Ca.* 149. *Comb.* 184.

Yet in Trespass *Quare Clausum fregit et Herbam ipsorum inde pervenien'* &c. is good; for as they may join in a *Clausum fregit*, so they may in the Profits *inde*. *Dan.* 719.

So, if in an Action for Words of Husband and Wife, it be *ad Dampnum* of both, it will be good. *R. Jon.* 409.

So where the Action survives, they may declare *ad Dampnum ipsorum*. *Dan.* 720. *R.* 1 *Sid.* 387. 3 *Mod.* 120. *Per* 2 *J.* 2. *cont. Pal.* 339.

So, in Trespass by Husband and Wife for the Battery of the Wife, *et alia enormia eis intulit* is good.. *R.* 2 *Cro.* 664.

So a Defect in a Declaration by Husband and Wife may be aided by Verdict. *Vide ante*, (C. 87.) *Vide Action*, (G.)

[In Action for a Demand not accruing to the Wife *dum sola*, Wife only taken in Execution for Costs, shall be discharged. *Barnes* 207.]

(2 A. 2.) In an Action against Husband Wife.

In an Action against Husband and Wife the Husband shall give Bail for himself and his Wife.

[If Husband and Wife are arrested for her Debt whilst sole, she shall be discharged, and he lie, till he puts in Bail for both. *Harrison* v. *Bearcliffe*. *T.* 21 *G.* 2. *Str.* 1272.

It ought to be against them in the *Debet and Detinet*, tho' it be for the Debt of the Wife *dum sola*. *Vide Post*, (2 W. 8.)

In Trover against them, it may be supposed that the Conversion was by them; for it is a *Tort*, for which both may be charged. *R. Yel.* 165. *R.* 1 *Rol.* 6. *l.* 10.

But a Declaration against Husband and Wife is bad, if the Process was against the Husband alone. 1 *Sal.* 115.

If the Conversion be alledged *ad Usum ipsorum*. *R.* 2 *Cro.* 661. *Jon.* 16, 264. *R. Cro. Car.* 254, 494. *R.* 1 *Rol.* 6. *l.* 10, 15, 27. *R. Pal.* 343. *R. Jon.* 443.

[Yet Trespass against Husband and Wife for taking Goods, is good, though the Conversion is laid to be to *their* Use; for the Conversion is not the Gist of the Action, as in Trover. *Smally* v. *Kerfoot*, *T.* 11 & 12 *G.* 2. *Andr.* 242.]

And a Suggestion of a *Devastavit* by Husband and Wife Executrix, *quod devastaver' et converterunt ad Usum ipsorum*, is good; for the *Devastaverunt* is the only material Word, and that both may do. *R.* 2 *Vent.* 45.

(2 A. 3) Plea, &c.

In an Action against Husband and Wife, both ought to join in Plea, and therefore if the Wife alone comes and pleads, there shall be a Repleader. *Yel.* 210. *Dan.* 720.

[The Court cannot give Leave to the Wife to plead separately from her Husband even where her Estate is settled on her, and confirmed by Order of House of Lords to her separate Use, subject to Demands on Husband on her Account, she must plead in the Name of Husband and, if he disavows, inforce the Order of the Lords. *Gordon* v. *Halpen*, *P.* 8 *G.* 2. *B. R. H.* 101.]

[If *A.* and *B.* are sued as Husband and Wife, *A.* cannot plead *ne unques accouple en loyal Matrimony*, for the Legality of Marriage is not triable in personal Actions,

Actions, becauſe a Husband *de facto* is liable to his Wife's Debts. *Norwood* v. *Stevenſon*, *T.* 11 & 12 *G.* 2. *Andr.* 227.]

So, if the Entry be *Quod* Huſband and Wife *ven' et defend' Vim et Injuriam et prædict'* Wife *dicit quod ipſa non eſt inde culpabilis.* 2 *Cro.* 288.

Tho' the *Tort* be ſuppoſed by the Wife only: As, in Battery againſt Huſband and Wife for a Battery by the Wife.

So, in *Aſſumpſit* againſt Huſband and Wife, upon a Promiſe of the Wife *dum ſola.* *R.* 2 *Cro.* 288. *Yel.* 210.

So, in an Action for Words ſpoken by the Wife only. *R. Yel* 210.

So, in Battery againſt Huſband and Wife and others, if the Wife and others plead, *Not Guilty*, and the Husband, *ſon Aſſault*, it will be bad. *R.* 1 *Brownl.* 197.

So, in Battery againſt Huſband and Wife, if the Husband juſtifies in Aid of his Wife, and the Wife only pleads, *ſon Aſſault*, it is bad. *R.* 2 *Cro.* 239.

So, they ought to join in the Averment, *Et hoc parati ſunt verificare.* *Semb.* *Cro. Car.* 594.

But, where the *Tort* is ſuppoſed by the Wife alone, tho' both join in Pleading; yet the Iſſue ought to be, that the Wife is Not Guilty; and therefore, in Trover upon a Converſion by the Wife, if the Husband and Wife plead, *Quod ipſi non ſunt culpabiles*, it is bad, and a Repleader ſhall be awarded, for it ought to be *quod ipſa non eſt culpabilis.* *R. Cro. El.* 883. *R. Hob.* 126. *R.* 2 *Cro.* 5. *R. Cro. Car.* 417. *cont'* in an Action for Words by the Wife, for both are chargeable with a Wrong done by the Wife. *R. acc.* in Action for Words by the Wife. 1 *Brownl.* 6. *Pal.* 68.

Yet in Debt againſt them, they may plead *Quod nil debent.* *Noy* 41.

And Iſſue *Quod ipſi non ſunt culpabiles* cannot be amended. 2 *Cro.* 530. *R. cont.* 1 *Brownl.* 7.

But, if the Dogget be *Quod* Husband and Wife *placitant* Not Guilty, and the Roll be *quod* the Wife *dicit*, omitting the Husband, it ſhall be amended; for it was only the Miſpriſion of the Clerk, for the Dogget was a Warrant to him to enter on the Roll a Plea for both. *R.* 2 *Cro.* 530.

So, if the Verdict finds that the Wife alone is Guilty, it aids the Plea. *R. Pal.* 68.

In an Action againſt Husband and Wife, if it be only for the Wife's Act, and She is found Guilty, both ſhall be in *Miſericordia:* As, for Words by the Wife. *Hob.* 127. 1 *Rol.* 215. *l.* 25.

In Trover for a Converſion ſuppoſed by the Wife. 1 *Rol.* 215. *l.* 45. 2 *Cro.* 439.

So if there ought to be a *Capiatur*, it ſhall be againſt both. *R. Cro. El.* 381. *Mo.* 704. *R.* 2 *Cro.* 203, 440. 1 *Rol.* 221. *l.* 35. *R. Cro. Car.* 407. But it ſhall be againſt the Huſband only. *Cro. Car.* 513. Againſt both. 9 *Co.* 72. *a.* & *Hob.* 98. and it was againſt the Wife alone. *Hob.* 101.

[In Trover, if there is Judgment and Execution againſt both, the Court will not diſcharge the Wife, unleſs there is Fraud and Colluſion between Plaintiff and the Husband to keep her in Cuſtody, *T.* 15 *G.* 2. *Str.* 1167.]

[So in Battery by Defendant's Wife, of Plaintiff's Wife the Court will not diſcharge the Wife who is only in Execution, if it appears there is no Deſign to ſcreen Husband. *Finch* v. *Duddin*, *M.* 19 *G.* 2. *Str.* 1237. *Lanſtaff* v. *Rain*, *M.* 20 *G.* 2. *Wilſ.* 149.]

[If Husband and Wife are taken in Execution, the Wife cannot be diſcharged. *Barnes* 203.]

So, if the Wife is Executrix or Adminiſtratix, and there is Judgment *de Bonis Teſtatoris ſi, &c. et ſi non tunc Cuſtag' de Bonis ſuis propriis*, tho' properly the Wife has no Goods; for ſhe will be liable after the Death of her Huſband. *R.* 2 *Cro.* 191.

(2 B. 1.) In Actions by and againſt a Corporation.

(2 B. 1.) In an Action by a Corporation.

In an Action by a Corporation they ought to ſue by the Name of Incorporation. 2 *Inſt.* 666. *Win. Ent.* 1100.

And may ſue by that Name, tho' enabled to ſue by another Name. *Sal.* 451.

And the Chriſtian Name of the Mayor or Head is not neceſſary. 12 *Ed.* 4. 10. *Dy* 86. *b.*

Tho' it be in Ejectment on a Demiſe by a Corporation. *Skin.* 2.

But a Corporation may preſcribe to be incorporated by one Name, and to be impleaded by another. *Th. Dig. l.* 3. *c.* 9. *S.* 9.

Or may claim it by Grant. *Th. Dig. l.* 3. *c.* 9. *S.* 12.

A Sole Corporation muſt always ſhew *quo Jure* he is ſeiſed. *R.* 2 *Lev.* 68.

And ſhall be named by his Name of Baptiſm. *Dy.* 86. *b.*

And if Perſons are incorporate to the Uſe of an Hoſpital, they muſt ſay, ſeiſed *Jure Corporationis ſuæ*, not *Jure Hoſpital'*. *R.* 10 *Co.* 34. *a.*

But Mayor and Commonalty need not alledge Seiſin *Jura Corporationis*; for the Name imports an Incorporation. 1 *Leo.* 153.

So *Cuſtos et Colleg' Omnium Animarum Oxon.* need not alledge Seiſin *Jure Collegii. R. Cro.* 232. *Pl. Com.* 102.

(2 B. 2.) In an Action againſt a Corporation.

In an Action againſt a Corporation, they muſt be ſued by the Name of Incorporation. 2 *Inſt.* 666.

And, if it be an Aggregate Corporation, it is not well to name the proper Name of the Head. *Bro. Corporation* 6.

But, if it is a ſole Corporation, the proper Name may be mentioned. *Bro. Corp.* 5, 30.

And ſo it muſt be in perſonal Actions, where Outlawry lies.

If a Corporation be miſnamed, it may be pleaded, but it is only in Abatement. 26 *H.* 8. 1 *b. Bend. pl.* 89.

So, it may be pleaded in Abatement, if the Name of the Head be added and miſtaken. *Bro. Corp.* 6.

Or, if a Corporation and another are joined, for there is different Proceſs againſt him. *Adm.* 45 *Ed.* 3. 2. 3. *Cont.* 46 *Ed.* 3. 23. *b.*

Tho' the Perſon joined be a Member of the Corporation. *Bro. Corp.* 13, 24.

Or in an Action upon a Specialty, if the Name varies from the Specialty. *Th. Dig. l.* 6. *c.* 12. *S.* 16.

To *Miſmoner* in a perſonal Action, the Plaintiff may ſay, known by one Name or the other. *Th. Dig. l.* 6. *c.* 12. *S.* 14, 16.

Otherwiſe, in a real Action, for he cannot hold the Land but by his true Name. *Th. Dig. l.* 6. *c.* 12. *S.* 14.

And he, who pleads an Act of a Corporation by one Name, and afterwards by another, ought to ſhew how the Name was altered. 3 *Lev.* 243.

The Proceſs againſt an aggregate Corporation is Diſtreſs. 45 *Ed.* 3. 3. *a.*

But Proceſs of Outlawry does not lie againſt an aggregate Corporation. 45 *Ed.* 3. 2, 3.

And therefore Treſpaſs does not lie againſt them, but only againſt particular Perſons; for a *Capias* and *Exigent* do not go. *Bro. Corp.* 43.

So a *Subpœna* does not lie; for it has no Conſcience. *D.* 2 *Bul.* 233.

But in *Chancery*, if it has Nothing whereby to be diſtrained, on a Petition to the Lords in Parliament, it may be ordered, that if the Corporation do not appear on a *Diſtringas* iſſued, the Bill ſhall be taken *pro Confeſſo. Ca. Cha.* 205.

It is not ſufficient, if the particular Perſons diſtrained appear at the Return of the Proceſs. *Bro Corp.* 28.

Or, if all the Members of the Corporation appear in Perſon. *Bro. Corp.* 28.

But the Corporation muſt appear by an Attorny, appointed under their Common Seal. *Bro. Corp.* 28.

In Pleading, a Mayor and Commonalty may preſcribe, that they and their Predeceſſors, *&c.* tho' the Commonalty have no Predeceſſors. 39 *H.* 6. 14.

If a Man makes Coniſance as Bailiff to a Corporation, he need not ſhew how they were incorporated. *R.* 3 *Lev.* 107.

If a Man pleads an Act by a Corporation, he need not alledge a Deed; for it ſhall be intended: As, if he makes Coniſance as Bailiff to a Corporation. 3 *Lev.* 107. *Bro. Corp.* 1, 51.

If he pleads a Preſentation to a Church by a Corporation. *Bro. Corp.* 24.

A Leaſe for Life, without a Deed to make *Livery*. *Pl. Com.* 149. *b.*

A Feoffment to them, without a Deed to receive *Livery*. 2 *Cro.* 411.

Entry for a Forfeiture. *Cro. Car.* 169.

Acceptance of Rent, or of a Man to be their Tenant. 2 *Sand.* 305.

A Fine levied, or Deed inrolled. 1 *Leo.* 184.

What Things a Corporation may do without Deed, or not. *Vide Franchiſes*, (F. 11, 12, 13.)

But if he juſtifies under a Corporation, he ought to ſhew a Deed. *Bro. Corp.* 54.

As, an Entry by Command of Dean and Chapter. *Bro. Corp.* 59.

(2 C. 1.) In Actions by and againſt an Infant.

If an Action be commenced by an Infant, he muſt ſue by Guardian or *Prochein Amy*, as the Court pleaſes. *Co. Lit.* 135. *b.* *F. N. B.* 27 *H. Adm.* 2 *Cro.* 641. *Dy.* 56. *a.* 2 *Inſt.* 261. *Semb. Cro. Car.* 86. *R. Cro. Car.* 161. *Semb.* 1 *Sid.* 69. *Lit.* 60. *R. Jon.* 177.

(2 C. 1.) In an Action by an Infant, Muſt ſue by Guardian or *Prochein Amy*.

And the King may appoint him a general Guardian. *F. N. B.* 27 *L.*

So he may appoint him two or three to be Guardians jointly or ſeverally, or to appoint others under them. *F. N. B.* 27 *L.*

A *Prochien Amy* ſhall be appointed by Virtue of the *Stat. W.* 2. 13 *Ed.* 1. 15. which enacts, That if an Infant, who would ſue, be *eſloigned* that he cannot do ſo in Perſon, his *Prochien Amy* may be admitted to ſue for him. 2 *Cro.* 641. and was appointed before in Aſſiſe by the *St. W.* 1. 48.

And this extends to all Caſes, where an Infant ſues, tho' he be not *eſloigned*. 2 *Inſt.* 390, 261.

So, he ought to appear to be an Infant, for if he ſues at full Age by Guardian or *Prochein Amy*, it is Error. 2 *Inſt.* 261. *Semb.* 2 *Cro.* 580. 1 *Bul.* 24.

If an Infant ſues or defends by a Guardian, ſuch Guardian muſt have a Warrant. *F. N. B.* 27 *J.* 2 *Inſt.* 261. 3 *Mod.* 236.

And therefore ſuch Guardian muſt be admitted by the Court. *Cro. Car.* 86.

So muſt a *Prochein Amy*. 2 *Inſt.* 261.

But a *Prochein Amy* need not have a Warrant. *F. N. B.* 27. *J.*

[A general Admiſſion of *prochien Amy*, to proſecute and defend all Suits, is ſufficient. *Archer* v. *Frowde*, *P.* 6 *G. Str.* 304.]

And if he ſues by Guardian, without ſaying, *Per Curiam hic ſpecialiter admiſſ'*, it is Error. 1 *Lev.* 224. *Semb.* 4 *Co.* 53. *b.* 3 *Mod.* 236.

And the Defendant need not plead, till the Plaintiff ſhews the Rule for his Admittance by Guardian or *Prochein Amy*. *Sti. Pr. Reg.* 264.

If the Court appoints a Guardian for an Infant, he ought to be in Perſon in Court. 2 *Leo.* 189.

And if he has not a Guardian by *Socage*, *&c.* the Court may aſſign an Officer of the Court to be Guardian or *Prochein Amy* for him. 2 *Inſt.* 261.

If the Guardian by *Socage*, or by Teſtament acts, no other ſhall be aſſigned, unleſs he miſbehaves himſelf. 1 *Sid.* 424.

But, if the Declaration ſays, *per Curiam ſpecialiter admiſſ'*, it is ſufficient, tho' there be no Admiſſion on the Roll. *R.* in *B. R. where there are many Precedents acc. which make the Law in ſuch Caſe.* 4 *Co.* 53. *b.* for it ſhall not be Error; but only a Miſdemeanor in the Agent employed in the Cauſe. *P.* 21 *Car.* 2. *Pr. Reg.* 38.

So in *C. B. R.* 1 *Sid.* 173.

And if there was an Admiſſion, tho' no Entry thereof on the Record, it ſhall be amended. *R. Cro. Car.* 86. *Hut.* 92. 1 *Lev.* 224.

If an Infant ſues by Guardian or *Prochein Amy*, he cannot afterwards remove his Guardian, or diſavow his *Prochein Amy*. *F. N. B.* 27 *K.*

But an Infant may have a Writ out of *Chancery* to remove him. *F. N. B.* 27. *M.*

Or the Court may remove him at their Diſcretion. *Ibid.*

As, in an Appeal by an Infant, the Court may diſcharge the Guardian aſſigned, and diſcontinue the Suit. *R.* 1 *Rol.* 288. *D.*

And therefore, if an Infant ſues by Attorney, it may be pleaded in Abatement.

And this ſince the *St.* 21 *Ja.* 13. which aids a Suit by him by Attorney after a Verdict. 2 *Sand.* 213.

So, if an Infant ſues by Attorney, it is Error. *R. in Exch.* 2 *Cro.* 5. *R.* 1 *Rol.* 287. *l.* 25. *Adm.* 2 *Cro.* 250. *R. Cro. El.* 424.

Tho' Judgment be given for the Infant.

So, if he ſues without ſaying by whom, which ſhall be intended in proper Perſon. *R.* 1 *Vent.* 103. *D. Sho.* 165.

So, if he commences a Suit by Attorney, and afterwards proceeds by Guardian. *R. Mo.* 665.

Or commences by Guardian, and afterwards, during his Infancy, proceeds by Attorney; for this will be a Diſcontinuance. *R.* 2 *Cro.* 250. *Co. Ent.* 289.

So, tho' he ſues in another Right, as Executor or Adminiſtrator. *R. cont. Cro. El.* 541. 1 *Rol.* 288. *l.* 10. *But a Quære is made.* 1 *Rol.* 288. *l.* 10. *Agr.* 2 *Sand.* 212. *R. M.* 1649. *Colt and Sherwood and* inter *Peyton and Dorce, cited* 1 *Vent.* 103. 1 *Mod.* 298. *And ſo are the Precedents. Lut.* 227, 368, 371. *R. Carth.* 122. *D.* 1 *Vent.* 54. *Acc. F, g.* 1.

So, tho' he ſues a Writ of Error. *D.* 1 *Rol.* 287. *F. N. B.* 27. *H.* 2 *Cro.* 250.

But, if an Infant ſues by Guardian, and after his full Age proceeds by Attorney, it is well. *R. Mo.* 665. 2 *Cro.* 580.

So, by the *St.* 21 *Ja.* 13. In Ejectment or perſonal Actions, if an Infant ſues by Attorney, it ſhall be aided after Verdict.

And by the *St.* 4 & 5 *Ann.* 16. After Judgment by Confeſſion, *Nil dicit*, *Non ſum informatus*, or after Writ of Inquiry executed.

So, if Several ſue jointly, and ſome are within Age, and ſome of full Age, and all appear by Attorney, it is no Error; for thoſe of full Age may make an Attorney for all. *R. cont.* 2 *Cro.* 303. *Dub.* 2 *Cro.* 289. *Semb. cont.* 1 *Keb.* 940.

As, Huſband and Wife may ſue by Attorney, tho' the Wife is an Infant. *D.* 2 *Sand.* 213.

So ſeveral Executors or Adminiſtrators may ſue by Attorney, tho' ſome are within Age; for all repreſent the Perſon of the Teſtator, and ſue in another Right. *R. Cro. El.* 378. 1 *Rol.* 288. *l.* 15. *R. per* 3 *J. Twiſd. cont.* 2 *Sand.* 213. 1 *Vent.* 102. 1 *Mod.* 296. 1 *Lev.* 299.

So, in Replevin, if the Defendants as Bailiffs to *A.* make Coniſance by Attorney, and One is an Infant, it is no Error; for they are in the Nature of Plaintiffs, and make Coniſance in another Right. *Dub.* 3 *Mod.* 248. *R. per* 3 *J. Holt cont. Sho.* 170.

So, if the Defendants avow in their own Right, and One is an Infant. *Semb. cont. Yel.* 58.

[Plaintiff's Attorney muſt give Defendant's Notice of Guardian's Place of Abode. *Tomlin* v. *Brookes*, *P.* 22 *G.* 2. 1 *Wilſ.* 246.]

(2 C. 2.) In an Action againſt an Infant. Muſt defend by Guardian.

So, in an Action againſt an Infant, he muſt appear only by Guardian, for he has not Knowledge of his own Affairs, or to chuſe a Man to plead well for him, and may have an Action againſt his Guardian, if he loſes by Miſpleading. *R. Jæpius*, 2 *Rol.* 287. *l.* 10, 20. *Dy.* 104. *b.*

And

And therefore if he appears by *Procbein Amy*, it is bad. *F. N. B.* 27. *H. R.* 2 *Cro.* 641. *Co. Lit.* 135. *b.* *Semb. Cro. Car.* 86, 161. *Hut.* 92. *R.* 2 *Rol.* 257.

So, in all Actions real, perſonal, or mixt, againſt an Infant, if he appears by Attorney, it is Error. *D.* 8 *Co.* 58. *b.* *D.* 9 *Co.* 30. *b.* *R.* 2 *Cro.* 10. *R. ſæp.* 1 *Rol.* 287. *l.* 20. 747. *l.* 10. *R. Cro. El.* 569. *Mo.* 460. *R. in Error upon a Judgment in Ireland.* 3 *Keb.* 384. *R.* 2 *Leo.* 189. *Adm. Yel.* 211. 2 *Cro.* 254. *R. Jon.* 432.

Tho' there was not any Warrant of Attorney upon Record. *R. Jon.* 432.

Tho' he be ſued in another Right, as Executor, or Adminiſtrator. *R.* 2 *Cro.* 441. 1 *Rol.* 287. *l.* 50. 1 *Rol.* 380. *Poph.* 130. *Per* 2 *J.* 3 *Bul.* 180.

[An Infant-executor, tho' joined with another of full Age, cannot be ſued by Attorney, tho' they might ſue. *Freſcobaldi* v. *Kinaſton*, *M.* 1 *G.* 2. *Str.* 783.]

So, if ſeveral Defendants appear by Attorney, and one is an Infant, it is Error, and the Judgment ſhall be reverſed againſt All. *R.* 2 *Cro.* 289. 1 *Rol.* 776. *l.* 25. *R.* 2 *Cro.* 303. *R. Al.* 74. *R.* 1 *Lev.* 294. *R. F,g.* 1.

So, if Huſband and Wife, being vouched in a Common Recovery, appear by Attorney, and the Wife is within Age. *Dub.* 1 *Rol.* 288. *l.* 20. 1 *Rol.* 303. *R.* 5 *Mod.* 209.

So, in a perſonal Action, if Huſband and Wife appear by Attorney, when the Wife is within Age. *R.* 1 *Vent.* 185. 2 *Lev.* 38. *R. cont. Sho.* 13.

So, in Replevin, if two avow by Attorney, and One is an Infant. *Dub. Sho.* 13. 3 *Mod.* 248. *R.* that it ſhall not be aſſigned for Error, for it was pleadable in Abatement. 1 *Sal.* 93, 205.

And it is ſufficient, if he was an Infant at the Time of the Judgment, tho' he arrived at full Age before Error brought. *Per* 2 *J. Cro. El.* 569. *Dub. Cro. El.* 853. 5 *Mod.* 209.

And ſuch Error ſhall be tried by the Country, and not by Inſpection.

[If an Attorney undertakes to appear for an Infant, and enters it *per Attornatum*, it may be amended, and made *per Guardianum*. *Straton* v. *Burges*, *M.* 5 *G. Str.* 114.]

[But if there is not an expreſs Undertaking to appear, it cannot be done. *Power* v. *Jones*, *T.* 7 *G. Str.* 445.]

If an Infant, Defendant, appears and pleads by Guardian, regularly he ought to be admitted ſuch before he appears or pleads. *Sti. Pr. Reg.* 265.

But if he is not admitted, it is not Error, but only a Miſdemeanor in the Attorney. *Sti. Pr. Reg.* 265.

And regularly the Admiſſion ought to be *ad defendendum*; for if the Guardian for the Defendant is admitted *ad proſequendum*, it is bad. *R.* 2 *Cro.* 641.

Yet if a Guardian is admitted *ad ſequendum*, it is good; for this may be applied indifferently to the Plaintiff or Defendant. *R. in a Common Recovery.* 2 *Sand.* 95. 1 *Sid.* 446.

Or *ad proſequendum*; for he proſecutes his Defence. *R.* 2 *Mod. Ca.* 25.

[If an Infant does not name a Guardian to appear by, the Court will give leave to Plaintiff to do it. *Stone* v. *Atwoll*, *T.* 10 *G.* 2. *Str.* 1076.]

[If Infant ſerved with Proceſs to appear by Attorney, appears by Attorney, the Court will make Rule for him to appear by Guardian, or Plaintiff to be at Liberty to name one to appear and defend. *Barnes* 418.]

[Plaintiff's Attorney ſhould apply to Defendant to name Guardian, and if he does not in ſix Days, apply to the Court to oblige him to do it. *Shipman* v. *Stevens*, 30 *G.* 2. 2 *Wilſ.* 50.]

In an Action againſt a Defendant, who is an Infant, the Plaintiff may declare, as againſt another Perſon; for if he is not chargeable in reſpect of Infancy, the Defendant ſhall plead that he is within Age. *Vide Poſt*, (2 G. 3. —2 W. 22.)

And therefore by his Declaration he need not alledge that the Thing done for him was for Neceſſaries: for, after Nonage pleaded, the Plaintiff may ſhew in his Replication that it was for Neceſſaries. *R. Jon.* 146.

If in an Action againſt an Infant, he demurs, he may wave it in the ſaid Term, and plead to Iſſue. *R.* 2 *Bul.* 69.

[After Plaintiff has proceeded to Judgment againſt an Infant, as if he was of Age, he cannot have the Appearance in Perſon ſtruck out, and have Appearance by Guardian entered. *Barnes* 413.]

(2 D. 1.) In Actions by and againſt an Executor or Adminiſtrator.

(2 D. 1.) In an Action by an Executor. *What Actions he ſhall have or not. Vide Adminiſtration,* (B. 13.)

In an Action by an Executor for a Thing, which he demands in Right of his Teſtator, he ought to name himſelf Executor, otherwiſe the Defendant may plead in Abatement. *Vide Abatement,* (E. 21.)

And it is not ſufficient to name him Executor in the *alias dictus.* 20 *H.* 6. 5.

If there are ſeveral Executors, All muſt join in the Action. *Reg.* 140. *a. b. Vide Abatement,* (E. 13, 14.)

Tho' ſome do not prove the Will, but refuſe before the Ordinary. *R.* 9 *Co.* 37. *R.* 1 *Lev.* 161.

Tho' One was within Age. *R.* 2 *Sand.* 213. 1 *Sid.* 449.

Tho' the Executor, who proves the Will, takes Adminiſtration during the Minority of the other Executor, who was within Age, and not joined in the Probate of the Will. *R.* 1 *Brownl.* 101. *Yel.* 130. *R. cont.* 2 *Lev.* 240.

In all Actions by an Executor (as Executor) the Writ muſt be in the *Detinet* only, tho' the Duty accrued in his own Time. *R.* 5 *Co.* 31. *b. Reg.* 139. *b. F. N. B.* 119. *M.*

As, if an Executor brings Debt againſt a Leſſee for Rent incurred after his Teſtator's Death. 5 *Co.* 31. *b. R. Cro. Car.* 225. *R.* 1 *Lev.* 250. *Semb. cont. Skin.* 5.

Or for an Eſcape on a Recovery by himſelf as Executor. *R.* 5 *Co.* 31. *b. Cro. El.* 326. *Sav.* 130. *but Periam cont. R.* 2 *Cro.* 546. *R. Sho.* 57. *Carth.* 49. *Comb.* 114. *R. Hob.* 272.

Or for Money due on a Sale by him of the Goods of the Teſtator. *Reg.* 140. *a.*

So, in all Caſes where the Money recovered is *Aſſets,* it may be in the *Detinet. R.* 1 *Lev.* 231.

Yet, in an Action upon his own Contract, it may be in the *Debet and Detinet,* tho' he is named Executor: As, in Debt for Rent on his own Leaſe of Land, which he had as Executor. *R.* 2 *Cro.* 685.

In Debt on the *St. Ed.* 6. for not ſetting out Tithes, where he has the Rectory as Executor. *Cited to be R.* 2 *Cro.* 545.

And, if the Action be in the *Debet and Detinet,* where it ſhould be in the *Detinet* only, or *econtra,* it is Subſtance. *R.* 2 *Cro.* 546.

But now it is aided after Verdict by the *St.* 16 & 17 *Car.* 2. 8. *R.* 1 *Sid.* 342, 379. *R.* 1 *Lev.* 251.

And by the *St.* 4 & 5 *An.* 16. on a general Demurrer.

[If Executor brings Action of Debt in the *Debet* and *Detinet,* inſtead of *Debet* only, it is aided after Judgment by Confeſſion, by *Stat.* 4 *Ann. c.* 16. *Lee* v. *Pilmy, H.* 1 *G.* 2. *Ld. Raym.* 1513.]

So, if the Plaintiff omits, *Profert in Cur' Litteras Teſtamentarias,* it is bad, on a ſpecial Demurrer. *Vide Ante,* (O. 3.—O. 17.)

Tho' it be on a *Scire facias* upon a Judgment by the Teſtator. *R. Sho.* 60.

[In a *Scire fieri* Inquiry, on Judgment recovered by an Executor, it is not neceſſary that it be alledged that the Teſtator is dead. *Morfoot* v. *Chivers, T.* 11 *G. Str.* 631.]

But in an Action by an Executor for an Eſcape out of Execution on a Judgment by him as Executor, he need not; for this is a *Tort* to him, tho' the Damages recovered are *Aſſets. R. Hob.* 38.

And if the Plaintiff names himſelf Executor or Adminiſtrator, when the Suit is in his own Right, it will be but Surpluſage. 1 *Vent.* 119.

[If the Executor of the ſurviving Executor do not ſhew that the firſt executors proved the Will, it is bad; but it is aided after Verdict. *Gradell* v. *Tyſon, M.* 13 *G. Str.* 716. *Ld. Raym.* 1441.]

[An

[An Executor cannot add a Count in his own Right. *Hooker* v. *Quilter*, T. 21 *G.* 2. *Str.* 1271. 1 *Wilſ.* 171.]

So in an Action againſt an Executor, as Executor, he muſt be named Executor. *Vide Abatement*, (F. 20.)

(2. D. 2.) In an Action againſt an Executor. *What Actions lie againſt him, Vide Adminiſtration*, (B. 14, 15)

Or muſt be ſhewn to be Executor; for, if the Declaration ſhews the Defendant to be Executor, tho' it does not name him Executor in the Beginning, it is ſufficient. *Semb.* 1 *Sand.* 112.

[In *B. R.* calling Defendant Executor in the Declaration, is ſufficient, without a ſpecial Averment. *Holiday* v. *Fletcher*, *M.* 1 *G.* 2. *Str.* 781. *Ld. Raym.* 1510.]

If the Defendant be Executor *de ſon Tort*, he ſhall be named Executor generally; for there is no other Form of Writ or Count. *R.* 5 *Co.* 31. *a.*

If an Action be againſt ſeveral Executors, and only one appears, or is taken, the Plaintiff may proceed and have Judgment againſt All. *R.* 1 *Sal.* 312.

In an Action againſt an Executor for a mere perſonal Thing, as Executor, the Writ ſhall be in the *Detinet* only. 1 *Bul.* 22. *Reg.* 139. *b.*

So, an Action againſt an Executor for Rent due, Part in the Life of the Teſtator, Part in his own Time, may be in the *Detinet* only. *R. Al.* 76.

So Debt for Rent in the *Debet and Detinet*, when the Rent is more than the Value of the Land, is bad; for if this appears upon the Plea, it ought to be in the *Detinet* only. *R. Pol.* 133.

But if the Duty accrues in the Time of the Executor, it ſhall be in the *Debet and Detinet*. *R.* 5 *Co.* 31. *Cro. El.* 712. But Judgment was reverſed (for another Cauſe as it ſeems.) *Vide Cro. El.* 712. *Dy.* 81. *b. in Marg.* 2 *Cro.* 546. 4 *Co.* 31. *b. in Marg.* 1 *Bul.* 23. *R.* 2 *Cro.* 238. 1 *Bul.* 22. *R.* 2 *Cro.* 411, 549. *R. Al.* 34. *R.* 1 *Mod.* 185. *Pol.* 129.

Yet it may be in the *Detinet* only. *R. Dy.* 81. *b. in Marg.* *R. Al.* 34, 42. *Pol.* 129.

So, if the Action be againſt an Executor, on a Judgment *de Bonis propriis*, it ſhall be in the *Debet and Detinet*. 1 *Rol.* 603. *l.* 12.

So, in Debt againſt an Executor, upon a Suggeſtion of a *Devaſtavit*. *R.* 1 *Sand.* 217. 1 *Sid.* 398. *R.* 1 *Lev.* 147. 256.

The Plaintiff cannot have an Action in *Detinet* for Part, and in *Debet and Detinet* for the Reſidue. *R.* 3 *Lev.* 74.

In an Action againſt an Executor, the Plaintiff need not alledge *Aſſets*, for it ſhall be intended. 9 *Co.* 94. *a.*

So, if it be againſt an Executor of an Heir, on a Bond of his Anceſtor. *R. Dy.* 344. *b.*

[In Debt on Bond, the Plaintiff muſt aver, that it is not paid by the Teſtator's Heirs, or that it is ſtill due. *Tully* v. *Sparkes*, *M.* 2 *G.* 2. *Ld. Raym.* 1546.]

If an Action be brought by an Executor, the Defendant may plead in Abatement that the Plaintiff is not Executor. *Vide Abatement*, (E. 22.)

(2 D. 3.) Pleas to an Action by an Executor.

Or another Executor not named. *Vide Abatement*, (E. 13.)

So Defendant may plead in Bar, that ſhe had the Goods as Wife *pro Apparatu*, and there are *Aſſets ultra*.

That *A.* adminiſtred before Probate, and gave or ſold the Goods to him. *Dub. Carth.* 104.

So, if an Action is brought againſt an Executor, he may plead in Abatement that he is Adminiſtrator, not Executor. 2 *Vent.* 178. 1 *Sal.* 296. 1 *Leo.* 69.

(2 D. 4.) To an Action againſt the Executor. In Abatement. Adminiſtrator not Executor.

In ſuch Plea he muſt ſhew that Adminiſtration was well granted to him.

And therefore, if the Archbiſhop granted it, he muſt ſhew in what Dioceſes the Inteſtate had *Bona notabilia*, whereby it may appear that it was in his Province. *R. Lut.* 30. *Semb.* 2 *Leo.* 155. *Cro. El.* (456.)

But this is no Plea for an Executor of his own Wrong, if he afterwards takes Administration. *R. Cro. El.* 102.

So he shall shew in what Diocese the Intestate died. *Lut.* 30. *Semb. Pl. Com.* 277. *a.*

And at what Time Administration was committed. *R.* 2 *Vent.* 180.

And that he had *Bona notabilia* to such Value; for to say that he had generally, is not sufficient. *R.* 8 *Co.* 135. *a.*

So he shall shew that the Archbishop had Authority to grant, for that there were *Bona notabilia, &c.* 2 *Leo.* 155.

Or that the Bishop had good Authority. *Cro. El.* 791.

But the Defendant need not traverse *absque hoc* that he administered as Executor, for this is more proper from the other Side. *Semb. Hob.* 49. *Lut.* 30. *R. inter Bowyer and Cook in B. R. M.* 7 *W.* 3. 5 *Mod.* 145. 1 *Sal.* 297. *R. cont. Lut.* 890. *Semb. cont. Yel.* 115. 2 *Vent.* 180. *Cont.* 7 *H.* 6. 13. *R.* 1 *Sal.* 298.

Nor that *A.* made him Executor. *Semb. cont. Yel.* 115. *R. acc.* 5 *Mod.* 145.

Otherwise, if he is sued as Administrator, and pleads that he is Executor to *A.* and not Administrator, he must traverse *absque hoc quod A. obiit intestat'.* 9 *H.* 6. 7. 7 *Ed.* 4. 13. 3 *H.* 7. 14. 4 *H.* 7. 13. *a. R. per tot' Cur' Yel.* 115. *Dub. Dy.* 202. *a. Semb. Dy.* 236. *b.* 5 *Mod.* 145.

And in such Plea he need not produce the Letters of Administration. *R. upon a special Demurrer. Lut.* 10. *Vide ante,* (O. 17.)

(2 D. 5.) Administration to a Stranger, and not to him.

So the Defendant may plead that Administration was committed to a Stranger, and not to him.

(2 D. 6.) Another Executor not named.

So he may plead another Executor not named. *Vide Abatement,* (F. 10.)

But he cannot plead another Action against himself as Heir. *R.* 3 *Lev.* 304.

(2 D. 7.) In Bar. *Ne unques Executor, &c.*

So to an Action against an Executor he may plead in Bar, *Ne unques Executor. Cl. Ass.* 74. *Win. Ent.* 341.

That he renounced, and *nulla Bona devenerunt ad Manus.*

But an Executor, who proves the Will, tho' he does not otherwise administer, cannot plead *Ne unques Executor.* 27 *H.* 8. 11. *a.*

So, if there are two Executors, and the one proves it in the Name of both against the Will of the other; yet he cannot plead *Ne unques Executor, nor administred as Executor. R. cont.* 27 *H.* 8. 11. *a.*

So an Executor shall not plead, that his Testator was outlawed. *R. Hut.* 53.

If a Man is Administrator, he cannot safely plead *Ne unques Executor,* tho' it was antiently done. 5 *Mod.* 145. *R.* 1 *Sal.* 296.

If another be Administrator *durante Minori Ætate* of an Executor, to whom the Defendant has accounted, he cannot plead that Fact with a Traverse that he never administred *alio Modo*; for the Plea does not admit him ever chargeable as Executor. *R. Sav.* 121.

To a Plea of *Ne unques Executor,* the Plaintiff may reply that the Defendant has administred. *Win. Ent.* 341.

(2 D. 8.) *Non est Factum, Non Assumpsit.*

So an Executor may plead in Bar the same Bar that his Testator might have pleaded: As, *Non est Factum Testator', Non Assumpsit Testator, &c.*

And if he says *Non est factum suum,* it is good; for *suum* refers to the Testator. *R. after Verdict, Lat.* 125.

So *Non Assumpsit* generally is good; for it shall be referred to the Testator. *R.* 1 *Lev.* 184. 1 *Sid.* 292.

(2 D. 9.) *Plene Administravit.*

So an Executor may plead in Bar, *Plene Administravit.* 2 *Sand.* 220. *Bro. V. M.* 215.

But

But this is no Plea, if he is ſued in the *Debet and Detinet*. *R.* 1 *Sid.* 334. 1 *Mod.* 185.

Otherwiſe, if ſued as Executor, tho' chargeable otherwiſe. *Dub.* 1 *Sal.* 317.

Or a ſpecial *Plene Adminiſtravit*, *viz.* a Judgment, Statute, Specialty, or Retainer, and no Aſſets *Ultra*. 1 *Sand.* 329, 333. 2 *Sand.* 49. *Co. Ent.* 146. *a.*

A Judgment on a Simple Contract. *R.* 1 *Sid.* 333. *R.* 3 *Mod.* 115. 1 *Lev.* 200. *R. Vau.* 94.

So a Judgment againſt one only, where there are ſeveral Executors. *Semb. Cro. El.* (471.) *R.* 1 *Sid.* 404. *Cont. Cro. El.* 41. but there the Judgment was *pendente Lite*.

So a Judgment againſt himſelf as Adminiſtrator; for he need not plead in Abatement, if it was a juſt Debt. *R.* 1 *Lev.* 261. *R. Cro. El.* 646. *R.* 1 *Sid.* 404. *Acc. Co. Ent.* 149. *a.*

So a Specialty before the Day of Payment. *R.* 3 *Lev.* 57. *Cro. Car.* 363.

So Judgment confeſſed by him to a Creditor upon a Suit, after the preſent Action commenced. *R.* 1 *Sid.* 21. *Vau.* 95. *R.* 1 *Sal.* 310. 1 *Lev.* 201.

[He may plead Judgments, without ſetting forth the Conſideration of them. *Williams* v. *Fowler*, *M.* 7 *G. Str.* 407.]

[An erroneous Judgment is a good Bar, if not fraudulent. *Ibid. Per Eyre* J.]

[If an Executor does not plead a Judgment againſt his Teſtator, to the Action; he ſhall not afterwards plead it to the *Scire facias*. *Earle* v. *Hinton*, *M.* 13 *G. Str.* 732.]

But an Executor *de ſon Tort* ſhall not plead Payment of Debts, tho' he may give it in Evidence upon *Plene Adminiſtravit*. *Per Holt*, *Carth.* 104.

If an Executor has a Term for Years of leſs Value than the Rent, and he is ſued for the Rent in the *Debet and Detinet*, he may plead that he has no *Aſſets*, and the Land is of leſs Value, and pray Judgment if he ſhall be charged, excepting the *Detinet*. 1 *Sal.* 297, 317.

If an Executor pleads *Plene Adminiſtravit*, the Plaintiff may pray Execution of Aſſets *cum acciderint*. 2 *Sand.* 216. *Cont. Cro. Car.* 373. *Acc.* 8 *Co.* 134. *a. Hob.* 199. *R.* 1 *Sid.* 448. 1 *Vent.* 94. 1 *Lev*, 286. 1 *Sal.* 312.

If he pleads *Plene Adminiſtravit præter* ſo much, which exceeds the Demand in the Declaration, the Plaintiff ſhall take Judgment by Confeſſion. *R. Yel.* 138.

Or reply Aſſets, or Aſſets *ultra*, *&c. Co. Ent.* 148. *b. Vide Ent.* 176. 1 *Sand.* 334.

And he muſt alledge the *Venue*, where the Aſſets are. *R.* 3 *Lev.* 311.

So the Plaintiff may reply that the Statute, *&c.* is burnt. *Per* 3 *J. Vau. cont.* 1 *Mod.* 186.

That it was for Performance of Covenants, which are not broken. *Co. Ent.* 147, 152. *Win. Ent.* 307.

Or that the Judgment, *&c.* was obtained or continued by Fraud. *Cont. Cro. El.* (462.) *Acc. Lut.* 662. *Cont. Mo.* 705. if it be not traverſed. *R. Jo.* 92. *R.* 8 *Co.* 132. *b.*

That the Statute was extended, and a *Liberate* ſued and accepted. *R.* 3 *Lev.* 269.

And he may, by Replication, anſwer to one only, or to every Judgment pleaded. *R.* 1 *Lev.* 281. *R.* 1 *Sand.* 337. 2 *Sand.* 50. *R.* 4 *Mod.* 64. 1 *Sal.* 310.

Or, ſay that only ſo much is due on all the Judgments, and he has Aſſets *ultra*. *R.* 3 *Lev.* 311. *Semb. per C. B. M.* 9 *An. Cont.* 3 *Lev.* 368. for the Whole is due for which the Judgment or Penalty was.

Or, that he paid ſo much on One Judgment, and ſo much on the other, and the Judgments are continued by Fraud, tho' he ſpeaks of them jointly. *R.* 2 *Mod.* 36.

Yet a Rejoinder that the Judgments are not continued by Fraud, is bad; for it ought to ſay, *that they or any of them*, *&c. R. Cart.* 221. *R.* 5 *Mod.* 64.

So the Defendant in his Rejoinder muſt not traverſe the Inducement, but the Fraud. *R. Jon.* 92.

That

That he brought another Action, which abated, and he ſues now by *Journeys Accompts*, and that the Defendant had Aſſets at the Time of the firſt Original ſued. *R.* 2 *Rol.* 187.

To which the Defendant ought to rejoin *No Aſſets at the Day of the firſt Original*, and cannot ſay *et prædict' D. ſimiliter*. *R.* 2 *Rol.* 186.

If the Plaintiff replies that the Judgment was by Fraud, he may rely upon the Fraud generally, or traverſe the ſpecial Matter. *R.* 2 *Sand.* 50.

So the Plaintiff may ſay, that the Judgment was given after the Teſtator's Death, and continued by Fraud; for ſuch Judgment is void. *R.* 2 *Mod.* 308.

So the Plaintiff may conclude his Replication *et ſic per Fraudem*, or rely on the ſpecial Fact, which is Fraud. *R. Lut.* 1637.

In what Order Debts are to be paid. *Vide Adminiſtration*, (C. 2.)

If the Plea of *Plene Adminiſtravit* is, that the Defendant *nulla habet Bona*, without more, it is bad.

Or that *Plene Adminiſtravit*, omitting *Et quod nulla habet*, &c. *R.* 3 *Lev.* 28.

Or *Nulla habet Bona nec habuit, Die Impetrationis Billæ*, without ſaying *nec unquam poſtea*, it is bad. *R. on Demurrer* 2 *Cro.* 132.

So, *nulla Bona Die Exhibitionis Billæ*, for he ſhould ſay *Die Impetrationis*. *R. Lut.* 1637, 8.

Nor ſhall it be aided by a Verdict, except where it is expreſly found, that he had no Aſſets before Plea. 2 *Cro.* 132.

So, if he pleads a Judgment againſt the Inteſtate upon a *Scire facias* againſt himſelf on the *St.* 8 & 9 *W.* 3. 11. it will be bad; for the Judgment ought to be againſt the Executor or Adminiſtrator himſelf, and ſo it muſt be pleaded. *R.* 1 *Sal.* 42.

But *Nulla habet Bona, quæ fuerunt Teſtatoris Tempore Mortis ſuæ*, is good; for it ſhall not be intended that Goods are come to him, which the Teſtator had not at his Death, and if it be ſo, it ſhall be ſhewn on the other Side. *R.* 2 *Cro.* 132.

And that he had no Goods when he firſt had Notice of the Plaintiff's Suit, is ſufficient. *Pl. Com.* 279. *a. Sho.* 184.

If the Defendant pleads a Judgment, he muſt ſhew in what Court, and when obtained. *R.* 1 *Mod.* 50.

If ſeveral Judgments, and one is not well pleaded, it will be bad on a general Demurrer. 1 *Mod.* 50.

If an Executor or Adminiſtrator ſuffers Judgment by Default, he admits Aſſets. *Mod. Ca.* 306. *R.* 1 *Sal.* 310.

So if he does not plead *Plene Adminiſtravit*. *R.* 1 *Sal.* 310.

Tho' the Judgment be againſt him *pendente Lite*; for he ſhould have pleaded it. *R.* 1 *Sal.* 310.

If he pleads twenty Judgments, he admits Aſſets for all. *R.* 1 *Sal.* 312.

If he pleads a Judgment for 1700*l.* for Principal and Intereſt, and that he has only 40*l.* if the Judgment as to Intereſt be bad, the Plaintiff ſhall have Judgment; for Aſſets ſhall be intended for the Reſidue, it not being expreſsly averred to the Contrary. *R.* 2 *Lev.* 40.

So, if the Defendant pleads No Aſſets *ultra*, &c. it is not well to ſay, that he has no Aſſets *præter Bona quæ non Attingunt*, or *non ſufficien' ad ſatisfaciendum* the Judgment, Statutes &c. pleaded; for no Iſſue can be joined upon ſuch Uncertainty. 8 *Co.* 132. *b. R.* 9 *Co.* 109. *b. Per* 2 *J.* 2 *Cro.* 626. *Per Vau.* 104. *R.* 1 *Lev.* 132.

Or that he has no Aſſets *ultra* what will ſatisfy. *Per Vau.* 104. *R.* 1 *Sid.* 210.

So, if he ſays that *nulla habet Bona præter Bona ad Valentiam*, and after ſays *Nulla alia Bona habet præter Bona quæ non ſufficiunt*; for this is is repugnant. *R.* 9 *Co.* 109. *b.*

But he ought to ſay that he has not Aſſets, *præter*, ſo much (naming the Sum certain) which is liable to the Judgment &c. 1 *Sid.* 210.

Or *præter Bona ſufficien' ad ſatisfaciendum* the Judgments, &c. for this imports that he has ſufficient for all the Judgments, &c. pleaded. *Per Vau.* 103. *R.* 9 *Co.* 109 *b.*

But then, if the Plaintiff replies that one of the Judgments was ſatisfied, and the Defendant demurs, it will be againſt the Defendant, for his Plea is falſified. *Per Vau.* 103. 9 *Co.* 109. *b.*

So, *No Aſſets præter Bona ad Valentiam Denar' ſolut' ad ſatisfaciendum the Judgments, &c.* is good, tho' one of the Judgments be diſcharged. *Per Vau.* 104.

And, *No Aſſets præter Bona non Attingen' ad 5l.* when the Judgment was for 100*l.* is good on a general Demurrer. *Per* 2 *J. Hob* 133.

And *præter Bona quæ non attingunt*, or *non ſufficiunt &c.* is Form only. *R.* 1 *Lev.* 132.

In *Plene Adminiſtravit*, if the Defendant alledges a Judgment, he need not ſhew that it was for a juſt Debt. *Per* 2 *J. Dod. cont.* 2 *Cro.* 626. *R.* 1 *Lev.* 200. *Qu. if it is not miſprinted.* 1 *Sid.* 333. *Lut.* 662. *R. on a ſpecial Demurrer. Carth.* 8.

So if he alledges a Statute acknowledged, he need not ſhew that it was *pro vero et juſto Debito*; for it may be for Performance of Covenants. *R.* 2 *Cro.* 8, 35. *R. cont. on Demurrer.* 2 *Cro.* 102.

So, if he alledges a Debt due to the King. *R. cont.* 2 *Cro.* 182.

So, in *Plene Adminiſtravit*, the Defendant need not alledge that his Teſtator *per Scriptum Obligat' conceſſit*; for it is not traverſable: And no one ſhall plead *Non eſt Factum* but the Party himſelf, his Heir, Executor, or Adminiſtrator. *R. Lut.* 662.

If he pleads ſeveral Judgments, he may conclue each with an Averment, or it may be more properly at the Concluſion of the Whole. 1 *Sal.* 312.

But if the Defendant pleads ſeveral Judgments, and no Aſſets *ultra*, if any Judgment be defective, the Plaintiff ſhall have Judgment: As, if one of the Judgments was againſt the Teſtator and others, and it does not appear that the Teſtator ſurvived, ſo that he might be chargeable. *R.* 2 *Sand.* 50. *R.* 1 *Sal.* 312.

If one of the Judgments was in an inferior Court which does not appear to have Juriſdiction. *R.* 8 *Co.* 133. *a. R.* 3 *Lev.* 141.

[If to Debt on Bond Defendant plead, that Creditor by Simple-contract had obtained Judgment againſt him in the Sheriff's Court, in Debt as upon *conceſſit ſolvere*, according to the Cuſtom of *London*; he muſt add, that Adminiſtrator is bound to pay it, as if due on Obligation; and he muſt ſhew that the Contract was made within the City, or it will be bad. *Scudamore* v. *Hearne*, *H.* 12 *G.* 2. *Andr.* 340.]

If a Recognizance was by the Teſtator and another, and it is not averred that the other was not paid. *R.* 9 *Co.* 110. *b.*

If one of the Judgments be found fraudulent; for tho' he pleads that he has only 5*l. ultra* all the Judgments, this is only Form, and not traverſable. *R.* 1 *Sal.* 312. *R.* 1 *Brownl.* 49.

If one of the Judgments was in Debt, where it ought to be in *Aſſumpſit*. *R.* 1 *Vent.* 198.

And the faireſt Way is to plead the Judgment, and ſhew how much is due thereon. *R.* 1 *Sal.* 312.

[Where a Bond is forfeited in the Life-time of Teſtator, the Penalty is the *legal* Debt, and on Iſſue what is due, muſt cover ſo much Aſſets; but on a Bond where the Day of Payment is not come, the Aſſets are covered only for the Sum in the Condition. *Bank of England* v. *Morice*, *H.* 9 *G.* 2. *Str.* 1028. *B. R. H.* 219.]

To a ſpecial *Plene Adminiſtravit*, if the Plaintiff replies that the Judgment was obtained, or continued, by Fraud, it is ſufficient to alledge generally that it was by *Covin*, without ſhewing the ſpecial Matter. 9 *Co.* 110. *a.*

So, it is ſufficient to ſay, it was by *Covin* of the Executor or Adminiſtrator only. *R.* 9 *Co.* 110.

So it is ſufficient to ſay that the Recognizance *&c.* was for Payment of a leſs Sum or for Performance of Covenants generally, and that the Sum is paid

in Satisfaction, or no Covenant broken, without mentioning the Time or Manner. *R.* 9 *Co.* 110. *a.*

And Payment in Satisfaction is ſufficient, without ſaying that the Conuzee was ready to acknowledge Satisfaction. *R.* 9 *Co.* 110. *a.*

And Acceptance in Satisfaction is a ſufficient Ground to ſay that the Recognizance is continued by *Covin* 9 *Co.* 110. *a.*

If the Defendant pleads ſeveral Judgments, the Plaintiff may reply to each ſeverally, or to all, or Part, or one, at his Election. *R.* 1 *Sal.* 298. *R. Sho.* 289. *Skin.* 299.

If he replies to Part, *continued by Fraud*, he cannot reply to the Others, *Aſſets ultra*; for this is admitted *R.* 1 *Sal* 298.

If the Plaintiff replies, *obtained, or continued by Covin*, the Defendant may traverſe or join Iſſue thereon. 9 *Co.* 110. *a.*

If an Executor pleads *Plene Adminiſtravit*, and, after Iſſue *relicta Verificatione* confeſſes Judgment, this is a Confeſſion of the Debt, but not of Aſſets. *R.* 1 *Rol.* 929. *l.* 25. *Hob.* 178.

If the Plaintiff replies after Judgment pleaded, that he prays Execution *cum Aſſets acciderint*, Aſſets afterwards ſhall be in the firſt Place applied to the Judgments. *R.* 1 *Sal.* 312.

If the Plaintiff on a *Plene Adminiſtravit* does not pray Execution, when Aſſets ſhall happen, but joins Iſſue that there are Aſſets, and it is found againſt him, the Judgment ſhall be, *quod Querens nil capiat.* 1 *Rol.* 929. *l.* 20. *Cro. Car.* 373. *Hob.* 199.

If Aſſets are found, tho' to a ſmall Value, there ſhall be Judgment for the whole Debt. 1 *Rol.* 929. *l.* 15. but the Execution ſhall be only for the Aſſets found. *R. acc. Cro. El.* 318. but the Clerks ſay, that the Precedents are otherwiſe. *Vide Precedents otherwiſe, Town. Jud.* 68. *R. acc. Cro. Car.* 167, 373. *R.* 8 *Co.* 134. *Dub. Mo.* 246. *Cro. El.* 592.

If there are two Executors, and one is outlawed, and the other pleads *Plene Adminiſtravit*, there ſhall be Judgment againſt both for the Debt, but for Damages and Coſts againſt him only who pleads. *R.* 1 *Rol.* 928. *l.* 47. 930. *l.* 5.

So, if both plead, and it is found that one has, and the other has not Aſſets, there ſhall be Judgment againſt both. *R.* 1 *Rol.* 929. *l.* 30.

Otherwiſe, if they plead ſeverally by ſeveral Attornies; for then he, who has not Aſſets, ſhall be quit. *R.* 1 *Rol.* 929. *l.* 50.

[If Plaintiff can only have Judgment *de Bonis Teſtatoris*; *plene adminiſtravit* is a good Plea in Covenant, tho' the Breach aſſigned is for Nonpayment of Rent incurred in their own Time. *Lyddall* v. *Dunlapp*, *H.* 16 *G.* 2. 1 *Wilſ.* 4.]

[If Executor or Adminiſtrator ſuffers Judgment by Default or Confeſſion, and an Action is brought on that Judgment, ſuggeſting *devaſtavit*, he cannot plead *plene adminiſtravit*; and ſo if he dies, and the Action is againſt his Executor or Adminiſtrator. *Skelton* v. *Hawling*, *H.* 23 *G.* 2. 1 *Wilſ.* 258.

[After Rule to plead iſſuably, he may plead Judgment confeſſed on Bond ſince Rule. *Barnes* 330.]

[But after ſuch Rule the Court will grant further Time, that another Judgment may be perfected, that he may plead it. *Barnes* 333.

(2 D. 10.) In an Action by an Adminiſtrator.

In an Action by an Adminiſtrator, he ought to be named Adminiſtrator.

[Adminiſtrator ſhall bring Action on an Aſſignment of Bail-bond given to him, as Adminiſtrator, and not in his own Name. *Ruſh* v. *Ruſh*; *P.* 6 *G.* 2. *C. B. Fort.* 370.]

If Adminiſtration be granted to him upon Refuſal of the Executor, who died Inteſtate, it may be omitted. *Reg.* 141. *a.*

Yet, if it is not omitted, it is not bad. *Dub. Dy.* 236. *b.*

If there are ſeveral Adminiſtrators, all muſt be joined. *Reg.* 140. *a.*

So he muſt ſhew by whom Adminiſtration was granted. 2 *Cro.* 89. *R.* 1 *Sal.* 38.

And it will not be aided on a general Demurrer. *R.* 1 *Sal.* 38.

And

And, if it be granted by a peculiar Juriſdiction, he muſt ſay at leaſt, *Cui pertinuit, &c.* or *Loci illius Ordinar'*; for by ſuch an One *ſanct' Theolog' Profeſſor'*; or, by ſuch an One *Decan'*, *Abbat'*, *&c.* is not ſufficient. 35 *H.* 6. 46. *R. Mo.* 367. *Cro. El.* 431, 791. *D.* 2 *Cro.* 556. *D.* 1 *Sid.* 228. *R. Lut.* 408. *R. Sho.* 355.

Yet, the Omiſſion of *cui pertinuit, &c.* ſhall be aided after Verdict. *R.* 4 *Mod.* 133. *Sho.* 355. *Skin.* 551.

Et debito Modo commiſſ' imports it. *R. upon Demurrer*, 1 *Sal.* 40.

But if Adminiſtration be alledged to be granted by the King, it is ſufficient, without more; for his Authority is known. *R. upon Demurrer, Al.* 53. 1 *Sid.* 302.

So, if alledged to be granted by an Archbiſhop or Biſhop. *R. Cro. El.* 6. 907, 879. *Adm. Cro. El.* 791. *Semb. cont. Cro. El.* (456.) *R.* 2 *Leo.* 155. *D.* 1 *Sid.* 302. *R. Cro. El.* 838. *R. Lut.* 1266.

Or by an Archdeacon; for he is *Oculus Epiſcopi*. *R.* 2 *Cro.* 556. 1 *Sid.* 302. *R.* 1 *Lev.* 193. *R.* 2 *Rol.* 150.

Or by the Official or Commiſſary of a Biſhop. *R.* 2 *Mod.* 65. *R. Lut.* 9. 1 *Sal.* 41.

Or by the Vicar-General of a Biſhop; for this means his Chancellor. 1 *Leo.* 312.

Yet, tho' a general Allegation of Grant of Adminiſtration by an Archbiſhop or Biſhop is ſufficient in a Declaration, or Inducement to a Traverſe, it is not ſufficient in a Bar or Replication, for that muſt ſhew how he has Authority. 2 *Leo.* 155. *Cro. El.* (456.) 791, 838. *Vide ante*, (2 D. 4.)

So it muſt appear when Adminiſtration was granted.

But Grant of Adminiſtration of the Goods *quæ fuerunt Inteſtati Tempore Mortis* is ſufficient, without ſaying that it was granted *poſt Mortem, &c.* for the other Words import it. *R. Cro. El.* 907.

So, if an Adminiſtrator ſues in the *Debet and Detinet*, except on his own Contract, it will be bad. *Vide Ante*, (2 D. 1.)

So, if the Plaintiff omits *profert Litteras Adminiſt'* in his Declaration, it will be bad on a ſpecial Demurrer. *Vide ante*, (O. 17.)—(2 D. 1.)

But Default of ſhewing by whom Adminiſtration was granted, ſhall be aided after a Verdict, by the *St.* 16 & 17 *Car.* 2. 8. 1 *Sal.* 38.

Or by Plea of *Non eſt Factum*, or other collateral Matter. *R.* 1 *Sal.* 38.

An Adminiſtrator, *durante minori Ætate A.* the Executor muſt alledge that *A.* is under the Age of ſeventeen Years; for under Twenty-one is not ſufficient. *R.* 5 *Co.* 29. *a. Cro. El.* 602. *Agr.* 2 *Cro.* 590. *Vau.* 93. *Vide Adminiſtration*, (F.)

And if he be Adminiſtrator during the Minority of Several, he muſt alledge that all are under Seventeen; for an Averment that three are, and Nothing ſaid of the fourth, is not good. *Dub.* 5 *Co.* 9. *Dub. after Verdict*, 1 *Sid.* 185. *R.* 2 *Jon.* 48.

And the Defendant may plead that the Executor has attained his Age of ſeventeen Years. *Per* 3 *J. Cro. Car.* 516. 1 *Rol.* 910. *l.* 30.

So, an Adminiſtrator *pendente Lite*, or during the Abſence of *A.* muſt ſhew that *A.* is abſent, *&c. R. Mod. Ca.* 304. 1 *Sal.* 42.

But an Averment that *A.* is within Age generally, is ſufficient after Verdict. *Cro. Car.* 240.

So no Averment, if the Defendant does not take Exception to it, but pleads in Bar, is good; for thereby he admits the Plaintiff to be able to ſue him. *R. Lut.* 632. *Per Ch. J.* 2 *Rol.* 466.

And the Judgment is not void. *R.* 1 *Rol.* 910. *l.* 20.

So, in an Action by an Adminiſtrator *durante Minori Ætate* of *A.* who is no Executor, but only intitled to Adminiſtration, it is ſufficient, if he alledges that *A.* is under twenty-one Years; for in ſuch Caſe the Adminiſtration does not determine at the Age of ſeventeen Years. *R. inter Freak and Thomas, P.* 13 *W.* 3. *Rot.* 102. (1 *Ld. Raym.* 667.) *inter Edmonds and Shaler, C. B. Tr.* 7 *An. Rot.* 340. (*Reported Comyns's Rep.* 159.) *Vide Adminiſtrator*, (B. 6.)

[If

[If Administrator of Executor has a Verdict, Judgment shall be arrested, for there should be Administration *de bonis non*. *Barnes* 444.]

(2 D. 11.) In an Action against an Administrator.

In an Action against an Administrator, it must be alledged that Administration was granted to the Defendant. *R.* 2 *Vent.* 84.

[Naming Defendant Administrator in Declaration sufficient Averment without setting out that Administration was committed to him, *Barnes* 159, 160.]

But *debitâ Juris Formâ concessit* is sufficient, without saying by whom it was granted. *Cont.* 2 *Cro.* 10. *R. acc.* 2 *Jon.* 1. *R. Lut.* 301. *R.* 1 *Sid.* 228.

And in an Action against an Administrator, if he pleads, Original purchased before Administration granted, there is no Occasion to shew by whom it was granted; for the Plaintiff by his Action against him admits him to be a legal Administrator. *Lut.* 9.

And if the Action be against an Administrator during the Minority of another, he need not alledge that the other is within 17 Years, for a Stranger cannot know when his Authority determines, and if it be determined, the Defendant ought to shew it. *R. after Verdict*, 2 *Cro.* 590. *R. Yel.* 128. *R. Hob.* 251. *Per Wind.* 1 *Sid.* 57. *R. Vau.* 93.

And therefore he may be charged by a Stranger as Administrator *durante minori Ætate*, if he continues in Possession after the Executor attains 17 Years. *Semb.* 1 *Sid.* 57. *Vide Administration*, (F.)

Or may be charged upon the special Matter. 1 *Sid.* 57.

(2 D. 12.) Pleas by an Administrator. In Abatement.

To an Action against an Administrator, he may plead in Abatement that he is not Administrator, but Executor. *Vide Abatement*, (F. 20.) *Vide Ante*, (2 D. 4.)

If he be sued as Administrator generally, who is Administrator during the Minority of another. *Lut.* 20.

Who administred *circa Funeralia tantum*, &c. 37 *H.* 6. 28. *a.*

Another Administrator not named. *Vide Abatement*, (F. 10.)

If he pleads that he administered in a special Matter only, and traverses the Administration *Modo et Forma*, he must shew that he did that which would be an Act of Administration. *R.* 37 *H.* 6. 28. *a.*

That the Original is *tested* before the Administration granted. *Lut.* 8. *Vide Abatement*, (G. 6.)

(2 D. 13.) In Bar.

So an Administrator may plead in Bar *Ne unques Administrator*. *Ast. Ent.* 286. *Cl. Ass.* 117. *Vide Ante*, (2 D. 7.)

Plene Administravit general or special. *Vide Ante*, (2 D. 9.)

But if he pleads *Retainer*, it is not sufficient to say, that Administration was committed, without saying that it was committed to him. *R.* 2 *Jon.* 23.

So it is no Plea in Bar that he is Executor, not Administrator. *R. Skin.* 365.

[An Administrator, Trustee in Intestate's Marriage-settlement, who covenanted to leave by Will, or that his Executors, &c. should pay 700*l.* to Trustees, to pay the Interest to his Wife for Life, then to divide among the Children, and if none, as he should direct, may plead *plene Administravit*, and give Retainer in Evidence, and Plaintiff will be nonsuited, and cannot have Judgment of Assets *Quando acciderint*; for if Defendant dies before the Widow and the Co-trustee, the Money will be out of his Hands at her Death. *Plumer* v. *Marchant*, *P.* 3 *G.* 3. 3 *B. M.* 1380.]

(2 D. 14.) Pleas to an Action by an Administrator.

So to an Action by an Administrator the Defendant may plead in Abatement, that there is another Co-Administrator living not named. *Vide Ante*, (2 D. 2.) *Vide Abatement*, (E. 14.)

But he cannot plead that another has the Right to the Administration. *R.* 1 *Mod.* 231.

Or in Bar, that Administration was never committed to the Plaintiff. *Han. Ent.* 105. *Cl. Ass.* 117.

And this, if it was committed by a Biſhop or Peculiar, when it does not belong to him. *Vide Adminiſtrator*, (B. 5.)

So, that the Inteſtate at his Death reſided out of the Dioceſe of the Biſhop, who granted the Adminiſtration. 1 *Sal.* 37.

So, that Adminiſtration was granted to another. 1 *Sal.* 38.

(2 D. 15.) Judgment againſt an Executor or Adminiſtrator. When *de Bonis propriis.*

In an Action againſt an Executor, or Adminiſtrator, if the Defendant pleads a Matter in Bar, which lies within his Knowledge, and is falſe, Judgment ſhall be for the Debt as well as for Damages and Coſts *de Bonis Teſtatoris ſi, et ſi non, tunc de Bonis propriis:* As, if he pleads *Ne unques Executor*, and it is found againſt him. *R.* 1 *Rol.* 930. *l.* 40. 933. *l.* 28. *Off. Ex.* 263. *Town. Jud.* 57. or *Ne unques Adminiſtrator. Town. Jud.* 71. 1 *Sand.* 217.

If an Action be againſt divers Executors, and one pleads *Ne unques Executor*, and the others *Plene Adminiſtravit*, and it is found againſt them, there ſhall be Judgment againſt All *de Bonis Teſtatoris ſi, &c. et ſi non*, againſt him, who pleaded *Ne unques Executor, de Bonis propriis.* 1 *Rol.* 932. *l.* 52.

[One Executor pleads a good Plea, the other a bad one, Judgment ſhall be againſt one Executor only. *Baldwin* v. *Church*, *P.* 1 *G. Str.* 20.]

If an Executor pleads *Ne unques Executor*, and it is found againſt him, the Judgment ſhall be *de Bonis propriis*, tho' he has neither proved the Will, nor adminiſtered. *Off. Ex.* 264.

And tho' he has refuſed before the Ordinary. *Dub. Off. Ex.* 264.

Otherwiſe, if an Action is brought againſt the Executor of *B.* who was the Executor of *C.* who pleads *B. Ne unques Executor.* 2 *Lev.* 133.

Otherwiſe in a *Scire facias* againſt an Executor, if he pleads *Ne unques Executor*, and it is found againſt him, the Judgment ſhall not be for the Debt *de Bonis propriis*, for the Plaintiff demands Execution *de Bonis Teſtatoris. R.* 1 *Rol.* 933. *l.* 30. *R. Lit.* 53.

So, if an Executor or Adminiſtrator pleads a Releaſe to himſelf, and it is found againſt him, the Judgment ſhall be for the Whole *ſi non de Bonis propriis. D. Mo.* 70. 2 *Cro.* 672. *Off. Ex.* 265.

On Payment, or Performance by himſelf. *Off. Ex.* 265. *Dub. Mo.* 70.

So in all Caſes on the Return of a *Devaſtavit* againſt an Executor, or Adminiſtrator, there ſhall be Judgment againſt him for the Debt as well as Damages and Coſts *de Bonis Teſtatoris, ſi, &c. et ſi non, de Bonis propriis. R.* 1 *Rol.* 932. *l.* 32, 35. *R. Mo.* 299. *Dy.* 105. *b.*

Or upon a Return that the Goods are *eſloined.* 1 *Rol.* 932. *l.* 30. *R.* 2 *Sand.* 403.

And, if there be Judgment againſt Huſband and Wife Executrix, and a Return that the Huſband waſted, it ſhall be *de Bonis ſuis propriis.* 1 *Rol.* 932. *l.* 25.

If a Return that the Wife waſted *dum ſola*, it ſhall be *de Bonis propriis* of both. 1 *Rol.* 931. *l.* 5. *R. Cro. Car.* 519.

And if the firſt Judgment was *de Bonis Teſtatoris, ſi, &c. et ſi non, tunc Dampna de Bonis propriis* againſt Huſband and Wife Executrix, and afterwards a *Devaſtavit* is found, the Judgment ſhall be againſt them *de Bonis propriis. R.* 1 *Rol.* 930. *l.* 50. *Cro. Car.* 519.

If there be a *Devaſtavit* by one Executor only, the Judgment ſhall be of his proper Goods. *Dy.* 210. *a. R. Cro. El.* 318. for the other Executor ſhall not be charged for the Wrong of his Co-Executor.

Yet if a *Devaſtavit* be charged againſt two Executors, and found *quoad* One, and Nothing ſaid *quoad* the other, it is bad. *Semb. Skin.* 571.

So where an Executor or Adminiſtrator is charged for his own proper Act or Default, the Judgment ſhall be for the Debt and Damages *de Bonis Teſtatoris, et ſi non, de Bonis propriis:* As, in *Detinue* for a Detainer after the Teſtator's Death. 1 *Rol.* 928. *l.* 37.

In Debt, for Rent incurred after the Death of the Teſtator. 1 *Rol.* 931. *l.* 3.

In Covenant for a Breach after the Death of the Teſtator. *R.* 1 *Sand.* 112. *R.* 2 *Cro.* 648. *Vide Poſt*, (2 D. 16.)

If an Executor acknowledges Satisfaction upon a Judgment to the Teſtator, which is afterwards reverſed, there ſhall be Reſtitution, *ſi non, &c. de Bonis propriis.* 2 *Rol.* 400.

And if the Act or Default of the Executor or Adminiſtrator is the Foundation of the Action, the Judgment ſhall be *De Bonis propriis* only: As, in *Aſſumpſit* againſt an Executor on his Promiſe upon good Conſideration to pay the Debt of the Teſtator. 1 *Rol.* 930. *l.* 15. 9 *Co.* 93. *a. R.* 2 *Lev.* 122. *D.* 1 *Leo.* 240. *R. Cro. El.* 406. *Mo.* 419. 1 *Leo.* 94.

In Covenant againſt an Executor or Adminiſtrator, for a Breach by him of a Covenant in a Leaſe, which he has as Executor or Adminiſtrator. *R.* 1 *Sal.* 309.

When the Judgment is *de Bonis propriis*, and upon a *Fieri Facias*, *Nulla Bona* is returned, the Execution ſhall be by *Capias* or *Elegit*. *Dy.* 185. *b.*

What ſhall be a *Devaſtavit*, and how found. *Vide Adminiſtration*, (I. 1, 2.)

[If Judgment on Verdict is ſigned after Teſtator's Death, a ſecond in Debt, on that Judgment *de Bonis Teſtatoris*, whereupon Error and Judgment affirmed; a third ſuggeſting *Devaſtavit de Bonis propriis*, and a fourth on Debt on the laſt, and Executor held to Bail; all is regular. *Barnes* 248.]

(2 D. 16.) When not.

But in all Caſes where the Action is againſt an Executor or Adminiſtrator, merely as Executor, or Adminiſtrator, the Debt ſhall be recovered only *de Bonis Teſtatoris*, and the Damages, which are for the Delay, *De Bonis Teſtatoris, et ſi non, de Bonis propriis.* 1 *Rol.* 928. *l.* 35. *D.* 1 *Sal.* 309. 1 *Brownl.* 50.

Tho' the Executor or Adminiſtrator pleads a falſe Plea: As, *Plene Adminiſtravit*, and it is found againſt him. 1 *Rol.* 931. *l.* 27. *Off. Ex.* 266. *Town. Jud.* 57.

Or it is determined againſt him upon Demurrer. *Dy.* 32. *a.*

So, if he pleads a Judgment, and no Aſſets *ultra*, and it be replied that it was by *Covin*, and found againſt him. *R.* 1 *Rol.* 931. *l.* 40. 1 *And.* 150.

So, if he pleads *Non eſt Factum Teſtatoris.* 1 *Rol.* 931. *l.* 35. *Semb. Dy.* 32. *a. in Marg. Off. Ex.* 266.

Or a Payment after the Teſtator's Death. *R.* 2 *Cro.* 191.

Or in *Quare Impedit* makes Title by a falſe Grant to the Teſtator. 1 *Rol.* 928. *l.* 45.

Or pleads in Abatement, *another Executor not named.* 1 *Rol.* 931. *l.* 25.

So, if the Breach be by the Executor himſelf: As, if *A.* covenants to pay 50*l.* if he, or his Executor, ſells the Land, and the Executor ſells it. *R.* 2 *Rol.* 415.

Tho' the Executor might be charged as Aſſignee as well as Executor. *Semb.* 1 *Sal.* 317.

So, if an Executor or Adminiſtrator is charged in an Action, where the Recovery is wholly in Damages. 1 *Rol.* 928. *l.* 40. and the Coſts only ſhall be *Si non, &c. de Bonis propriis.*

So, in Covenant, upon a Breach by the Teſtator. *R.* 1 *Rol.* 931. *l.* 45.

So, in Covenant againſt an Executor upon the Teſtator's Deed, if the Breach be alledged in *Nonfeaſance* by the Executor himſelf, the Judgment ſhall be *de Bonis Teſtatoris tantum:* As, for not repairing. *R.* 1 *Rol.* 932. *l.* 5. *Dy.* 324. *b. R. Hob.* 188. [*Clements* v. *Walker.* (Error from *Ireland.*) *H.* 8 *G.* 3. 4 *B. M.* 2154.]

For not making Offer of a Preſentation. *R.* 1 *Rol.* 931. *l.* 50.

So, in Debt upon a Bond for Non-performance of Covenants. *R.* 2 *Cro.* 647. *R. Hob.* 283.

So, tho' the Breach be for a Voluntary Neglect, or Act of the Executor; for the Charge is founded upon the Deed of his Teſtator. *R.* 2 *Cro.* 671. *Adm.* 1 *Sand.* 112. *R. Hut.* 35.

In all Caſes where the Plaintiff is delayed, tho' the Demand be *de Bonis Teſtatoris*; yet the Coſts or Damages given for the Delay ſhall be *de Bonis propriis, non, &c.* 1 *Rol.* 928. *l.* 35.

Tho' the Executor or Adminiſtrator ſuffers Judgment againſt him by *Nihil dicit*, or *Non ſum informatus*. *Off. Ex.* 268. 1 *Rol.* 933. *l.* 5. *R.* 2 *Sand.* 107. *Aſſ. Ent.* 282.

So, if he confeſſes the Action. 1 *Rol.* 933. *l.* 10.

So, if he appears at the Return of the Summons, and pleads in Abatement, and on the *Reſpondeas Ouſter* ſuffers Judgment by *Nil dicet*. *R. Cro. Car.* 519.

So, if an Action be brought againſt Huſband and Wife, as Executrix, or Adminiſtratrix, the Judgment ſhall be for Damages and Coſts, *ſi non, &c. de Bonis propriis* of both. *R. Cro. Car.* 519.

But if an Executor, or Adminiſtrator, makes no Delay or Default, the Coſts or Damages as well as the Debt ſhall be *de Bonis Teſtatoris tantum*: As, if he at the Return of the Summons acknowledges the Action, and ſays that he has not Aſſets, and it is found ſo. 1 *Rol.* 933. *l.* 15.

If at the Return of the Summons he pleads, that he was always ready, and yet is. 1 *Rol.* 933. *l.* 20.

If the Judgment be *de Bonis Teſtatoris, ſi, &c. Et ſi non, tunc Damna de Bonis propriis*, the Sheriff may not levy the Damages *de Bonis Teſtatoris*, if he cannot levy the whole Debt alſo *de Bonis Teſtatoris*; for the Damages in ſuch Caſe ſhall be of the Goods of the Executor. *R.* 1 *Lev.* 7.

And if the Sheriff does otherwiſe, his Return, and All Proceeding thereon, will be bad. 1 *Lev.* 7.

(2 E. 1.) In Actions by and againſt an Heir.

(2 E. 1.) In an Action by an Heir.

In an Action by an Heir, who ſues upon a Grant or Covenant to his Anceſtor and his Heirs, he muſt be named Heir.

Otherwiſe, if he ſues in his own Right, tho' he comes to the Right by Deſcent: As, in *Detinue* of Charters, which he claims as Heir. *Th. D. l.* 3. *c.* 6.

So he muſt ſhew how Heir. 1 *Sal.* 355.

Debt by the Heir or Succeſſor ſhall be in the *Debet and Detinet*. 47 *Ed.* 3. 23. *b.*

(2 E. 2.) In an Action againſt an Heir.

In an Action againſt an Heir, the Defendant muſt be named Heir. *Vide Abatement*, (F. 20.)

But it is ſufficient if he is ſo named in the Count, tho' not in the Writ. *Reg.* 140. *a.*

And, if it be againſt the Heir of an Heir, the Plaintiff muſt ſhew how Heir ſpecially, for againſt him as Heir generally to *A.* if he pleads that he has *Riens per Diſcent* from *A.* it ſhall be found for the Defendant. *R. Cro. Car.* 151.

If it be againſt an Heir in *Gavelkind*, it ſhall be againſt all the Sons together. *Bro. R.* 195. *Bend. pl.* 205.

By the *St.* 3 & 4 *W. & M.* 14. an Action may be brought againſt the Heir and Deviſee of the Land jointly. *Clift* 243.

So, in an Action againſt an Heir on a Bond, *&c.* of his Anceſtor, the Plaintiff muſt ſhew that the Heir was bound.

So, in an Action upon an *Aſſumpſit* to pay the Debt of his Anceſtor. *R.* 2 *Sand.* 136. *R. cont.* 1 *Sid.* 31.

And the Omiſſion ſhall not be aided after Verdict. *R.* 2 *Sand.* 136. *Ray.* 128. 1 *Vent.* 159.

But it may be amended. *Lut.* 508.

Debt againſt an Heir on the Bond of his Anceſtor ſhall be in the *Debet and Detinet*. *Pl. Com.* 441. *a.* *Dy.* 344. *b.* *R.* 1 *Sid.* 342. 2 *Leo.* 11. *R.* 1 *Lev.* 130. *R. Jon.* 87. *Reg.* 140. *a.*

And, if the Heir received ſufficient out of the Land, and died before Recovery againſt him, Debt lies againſt his Executor. *Semb. Dy.* 344. *b.*

And there is no Need to ſhew in a Declaration, that the Heir had Aſſets; for it ſhall be intended *prima Facie*. *Dy.* 344. *b.*

But

But in an Action againſt an Heir, it is ſufficient that he is named Heir to him who was laſt ſeiſed.

So, if *A.* Tenant for Life, Remainder to his Eldeſt Son in Tail, Remainder to *A.* in Fee, dies, and the Eldeſt Son enters and afterwards dies without Iſſue, Debt lies againſt the Youngeſt Son, as Heir to *A.* without naming his Elder Brother. *R. Sho.* 248. 3 *Lev.* 286, 287. 3 *Mod.* 253.

So the Plaintiff need not ſhew how the Defendant is Heir; for it does not lie within his Knowledge. *R.* 1 *Sal.* 355.

So the Omiſſion of *Debet* ſhall be aided after Verdict. *Semb.* 1 *Sid.* 342. *R.* 2 *Mod. Ca.* 356.

(2 E. 3) Pleas by an Heir. *Vide Aſſets*, (A.—B.)

In an Action againſt an Heir in the Place of his Anceſtor, if he is within Age, he may pray that the *Parol* may demur 'till his full Age. *Cl. Aſſ.* 401. *Vide Enfant*, (D. 1.)

So in Debt againſt Heirs in *Gavelkind*, if one be within Age. *Aſt. Ent.* 241. *Bro. R.* 195.

Or againſt Parceners. 3 *Co.* 13. *a.*

But if all are outlawed, and the others are pardoned, but not the Infant, the *Parol* ſhall not demur for the Nonage of the Infant. *R. Mo.* 74. *Dy.* 239. *a. Bend. pl.* 205.

And at the full Age of the Infant there ſhall be a Reſummons againſt all the Co-heirs. *Bro. R.* 196.

But the Heir cannot plead that the Executor, or Adminiſtrator, has Aſſets. *Pl. Com.* 439. *b. R. Dy.* 204. *b.* 1 *And.* 7.

Or, that there is an Executor, or Adminiſtrator; for the Obligee may ſue one or the other. *R.* 3 *Lev.* 189. *R. Bend. pl.* 142.

Or, that there is another Action depending againſt him as Executor. *R.* 3 *Lev.* 303, 4.

Or, that the Plaintiff has recovered Part againſt the Executor or Adminiſtrator. *Semb.* 3 *Lev.* 304.

The ſafeſt Way for the Heir is to confeſs the Action, and ſhew the Certainty of the Aſſets deſcended to him. *Pl. Com.* 440. *a.*

Or, if he has no Aſſets, to plead *Riens per Diſcent*. *Lut.* 290. *Bro. R.* 195.

Or, if he has only a Reverſion after an Eſtate Tail; for he may plead generally. *Nothing by Deſcent*. 3 *Lev.* 287.

[Or that he has paid Debts to more than the Value of the Lands deſcended to him. *R. on Demurrer.* In *C. B. Buckley* v. *Nightingale*, *M.* 12 *G. Str.* 665.]

So he may plead, *Nothing but a Reverſion after an Eſtate for Life or Years.* *Aſt. Ent.* 262. *Dy.* 373. *b. Lut.* 443.

Or, except ſuch Lands and alſo a Reverſion. *Tho. Ent.* 208.

But he cannot plead a Recovery of Dower by a Decree in *Chancery*. *R.* 1 *Sal.* 355.

So an Heir may plead a Releaſe to himſelf.

Or a Releaſe to the Executor, or Adminiſtrator of the Obligor. *Co. Lit.* 232. *a.*

Or a Bond by the Executor, or Adminiſtrator, for the ſame Debt. *R.* 1 *Mod.* 221, 225. *Vide Poſt*, (2 W. 46.)

Or Retainer for his own Debt. *Q.* 2 *Ver.* 62.

If the Heir confeſſes Aſſets, he ought alſo to confeſs the Action. *Semb. Lut.* 444.

If he has a Reverſion, that the Leſſee entred and the Reverſion deſcended. *Dub. Lut.* 444.

And he cannot pray a Delay of Execution during the Term. *R.* 1 *Sal.* 355.

(2 E. 4) Replication.

To *Riens per Diſcent* the Plaintiff may reply, *Aſſets deſcended*. *Aſt. Ent.* 240. *Dy.* 344. *b. Bro. R.* 195.

Or a Writ purchaſed by *Journeys Accompts*, and that he had Aſſets at the Purchaſe of the firſt Writ. *Lut.* 290, *&c.*

So,

So, if he pleads, *Riens per Diſcent præter a Reverſion after an Eſtate Tail*, the Plaintiff may ſay, that Aſſets deſcended generally; for *præter* is idle, and the Plaintiff ſhall anſwer to the material Part only. *R.* 2 *Mod.* 50.

So by the *St.* 3 & 4 *W.* & *M.* 14. the Plaintiff may reply that the Defendant had Aſſets by Deſcent before the Original purchaſed.

After *Riens per Diſcent* pleaded, the Plaintiff may pray Execution of Aſſets *cum acciderint.* 8 *Co.* 134. *a.* 2 *Sand.* 226. 1 *Sid.* 448. 1 *Rol.* 57.

Or if *Riens per Diſcent præter*, he may pray Execution of Aſſets confeſſed.

Or reply that the Defendant had Aſſets *ultra.* 2 *Mod. Int.* 222.

And if he replies Aſſets *ultra*, he may waive it, and pray Judgment of Aſſets confeſſed *cum acciderint.* 1 *Rol.* 57.

And now by the *St.* 3 & 4 *W.* & *M.* 14. That he had Aſſets before the Original purchaſed, or Bill filed, and if it be found ſo, tho' the Heir has aliened, the Plaintiff ſhall recover againſt him to the Value of the Sale, tho' the Alienation made *bonâ Fide* ſhall be in Force.

And ſuch Replication ſhall conclude to the Country. 2, 5 *Mod.* 123.

And it need not ſay, to the Value of the Debt; for the Value is not material. *Semb.* 5 *Mod.* 123.

So the Defendant cannot by Rejoinder ſay, that he has paid another Debt to the Value of the Aſſets ſold. 2, 5 *Mod.* 121, 123.

(2 E. 5.) Judgment againſt an Heir.

If the Heir confeſſes the Action, and ſhews the Certainty of Aſſets, he ſhall not be charged in Perſon, Goods, or other Land, except what he had by Deſcent from his Anceſtor. *Pl. Com.* 440. *a.* *Town Jud.* 67. 2 *Rol.* 71. *l.* 50. 70. *l.* 35.

If he pleads, *Riens præter a Reverſion*, the Plaintiff may take Judgment for Debt and Damages *de Revertion' prædict' levand' cum acciderit.* *Dy* 373. *b.*

But if the Heir pleads a falſe Plea, which he knows of his own Knowledge to be falſe, there ſhall be Judgment againſt him generally, and Execution of his own proper Lands and Goods, and againſt his Body, by *Capias ad ſatisfaciendum*, like as for his own proper Debt. *Pl. Com.* 440. *a.* 2 *Rol.* 70. *l.* 40.

So, if he pleads *Riens per Diſcent*, and it is found againſt him. *Pl. Com.* 440. *a.* *Dy.* 149. *a.* 2 *Leo.* 11.

So, if he pleads Payment by his Anceſtor, and it is found againſt him. *R. per* 3 *J. Dolb. cont. Sho.* 78. *Vide infra.*

Or Payment by another Bond. *R. Carth.* 93.

Tho' the Aſſets found are ſmall, and not to the Value of the Debt.

So, if his Plea be falſified in Part by a Jury of *H.* tho' the Trial ought to be by a Jury of *H.* and *M.* *Semb.* 2 *Lev* 178.

So, if the Plaintiff ſhews to the Court, that the Defendant has received from the Death of his Anceſtor, before the Original ſued, Aſſets out of the Profits of Land which deſcended, and the Defendant does not deny it. *R.* 2 *Rol.* 71. *l.* 5. *Per Dy.* 344. *b.*

So, if Judgment be againſt the Heir by *Nil dicit.* *Pl. Com.* 440. *a.* *Cont. Dy.* 81. *a. but R. acc. in Marg. ibid.* *R. Mo.* 522. *Cro. El.* 692. *Vide St.* 3 & 4 *W.* & *M.* 14. *Sect. antepenult'.* *Cont. Jon.* 88. *Acc.* 2 *Rol.* 71. *l.* 45. 70. *l. ult.* *Cont. Poph.* 255.

Or, by *Non ſum informatus.* *Pl. Com.* 440. *a.* *Cont. Dy.* 81. *in Marg.* *Acc. Dy.* 344. *b.* *Cont. Jon.* 88. *Acc.* 2 *Rol.* 71. *l.* 45. 70. *l.* 50.

Or, by Confeſſion. *Pl. Com.* 440. *a.* if he does not alſo ſhew the Certainty of the Aſſets. *Dy.* 344 *b.* *Vide St.* 3 & 4 *W.* & *M.* 14. *Cont. Jon.* 88. *Acc.* 2 *Rol.* 71. *l.* 45. 70. *l.* 45.

So, if Judgment be againſt the Heir upon Demurrer. *Pl. Com.* 440. *b.* *Per St.* 3 & 4 *W.* & *M.* 14.

Or, by any other Means except Confeſſion and ſhewing the Certainty of the Aſſets. *Pl. Com.* 440. *a.*

By the *St.* 3 & 4 *W.* & *M.* 14. a Deviſee of Land, who is ſuable with the Heir by that Statute, ſhall be liable for a falſe Plea by him pleaded in the ſame Manner as the Heir ſhould have been for a falſe Plea, or not confeſſing the Aſſets deſcended.

But if there be Judgment againſt the Heir upon a falſe Plea, as for his proper Debt, it ſhall be only of a Moiety of all his Lands. *R. Jon.* 87.

So, in *Scire facias* againſt an Heir, for he is charged as *Tertenant*. *Cro. Car.* 296, 313.

And the Plaintiff ſhall have his Election to take Judgment againſt him, as for his proper Debt of the Moiety, or to take Judgment of all the Lands, which he has by Deſcent. *R. Jon.* 88. 2 *Rol.* 71. *l. ult' & l.* 10. *D. Poph.* 155.

Yet if he takes Judgment for the Lands which deſcended, it will be Error, if it does not appear to be by the Plaintiff's Aſſent. *R.* 2 *Rol.* 71. *l.* 20.

Tho' it is found by the Jury, who find the Iſſue, or by Writ of Inquiry, that he has Lands by *Deſcent*. *R.* 2 *Rol.* 71. *l.* 30.

Yet in a *Scire facias* upon a Judgment, or Recognizance, againſt an Heir, if he pleads a falſe Plea, the Judgment ſhall be ſpecial againſt him for Aſſets which deſcended. *Dy.* 81. *a. in Marg. R. Jon.* 87. *Carth.* 93. *Vide ſupra.*

So, in Debt againſt an Heir upon a Deed of his Anceſtor, who pleads *Non eſt factum*, and it is found falſe, the Judgment ſhall be only for Aſſets which deſcended; for it was not falſe in his own Knowledge. *R. Cro. Car.* 437.

So in Annuity againſt the Heir on his Anceſtor's Grant, who pleads *Non eſt factum*, and it is found againſt him, the Plaintiff may have Judgment for Aſſets which deſcended. *R.* 2 *Rol.* 71. *l.* 15.

So by the *St.* 29 *Car.* 2, 3. (which makes a Truſt in Fee-Simple, and alſo an Eſtate *pur autre Vie*, which comes to the Heir as a ſpecial Occupant, Aſſets in the Hand of the Heir) no Heir, who becomes chargeable by that Act, ſhall, by reaſon of any Kind of Plea, Confeſſion, or *Nient dedire*, be chargeable to pay out of his own Eſtate.

So by the *St.* 3 & 4 *W.* & *M.* 14. If the Defendant pleads *Riens per Diſcent* the Day of the Original or Bill filed, the Plaintiff may reply, *Aſſets before the Original*; and if it is found for the Plaintiff, the Jury ſhall inquire of the Value of the Lands deſcended, and thereupon Judgment and Execution ſhall be awarded.

(2 E 6.) Execution.

Execution ſhall be againſt the Heir, for the Whole of the Land deſcended. 3 *Co.* 12. *a. Pl. Com.* 441. *a. Semb. Dy.* 81. *a. Jon.* 87. 2 *Rol.* 71. *l.* 50.

And, if Land deſcends to the Eldeſt Son, and other Land, being of the Nature of *Borough Engliſh*, deſcends to the Youngeſt, the Whole ſhall be taken in Execution. *Jon.* 88.

So, if Land deſcends as well on the Part of the Mother as on the Part of the Father, the Whole ſhall be taken. 3 *Co.* 14. *a. Jon.* 88.

So, if Land deſcends to *Parceners*, the Whole ſhall be taken.

So, if Land of the Nature of *Gavelkind* deſcends. *Jon.* 88.

And if Execution be ſued againſt one Son or Daughter only, it may be avoided by *Scire facias*, or *Audita Querela*; for all the Heirs ought to be contributory. 3 *Co.* 13.

If there be an Action againſt an Heir by *A.* and afterwards another Action by *B.* who has Judgment firſt, he ſhall have Execution prior to *A.* tho' he obtained Judgment afterwards. 1 *Mod.* 253.

If there be an Action againſt an Heir, and Judgment thereon, the Execution ſhall be of the Land in his Hands, which deſcended, tho' he has paid to other Creditors to the Value of the Land in his Hands. *Kelw.* 63. *b.*

But if there be Judgment againſt the Anceſtor, who afterwards aliens Part, and dies, and Execution be ſued againſt the Heir only, it is well; for he ſhall not have Contribution againſt the Alienee. *R.* 3 *Co.* 12. *b.*

So, if there be Judgment againſt an Heir on *Nil dicit*, the Plaintiff ſhall not have a *Capias ad ſatisfaciendum* againſt him; for it is not his proper Debt. *Dy.* 81. *a. R. cont. Cro. El.* 692.

So,

So, if the Judgment be againſt him on *Non ſum informatus*. *Dy.* 81. *a. in Marg.*

What Lands are Aſſets in the Hands of the Heir. *Vide Aſſets*, (A.)

(2 F. 1. In Actions by and againſt an Aſſignee.

In an Action by an Aſſignee, the Plaintiff muſt ſhew how Aſſignee.

(2 F. 1.) In an Action by an Aſſignee.

If he ſues for Rent upon a Leaſe by another, he muſt ſhew a legal Eſtate or Title to it. *R. Cro. El.* 535.

But, if he ſhews an Aſſignment, it is ſufficient; tho' he does not name himſelf Aſſignee. *R.* 2 *Cro.* 240. *R. per* 3 *J. Cro. El.* 823.

So, if an Aſſignment be by Huſband and Wife, where they were ſeiſed to them and to the Heirs of the Huſband, it is ſufficient to declare as Aſſignee of the Huſband; for the Eſtate for Life of the Wife is merged. *R. Cro. Car.* 285. *Jon.* 305.

(2 F. 2.) In an Action againſt an Aſſignee.

In Debt for Rent againſt the Deviſee of the Leſſee, the Plaintiff muſt ſhew an Entry by the Aſſent of the Executor, or *Virtute Legationis*. *Cro. El.* 535.

But it is ſufficient to charge the Defendant as Aſſignee of *B.* to whom the Leaſe is made by which he covenants to repair; tho' he be only Executor, or Adminiſtrator, to ſuch Aſſignee. *R. Carth.* 519.

As to Proceedings and Pleading in Account, *Vide Accompt*, (E. 1, &c.)

(2 G) Pleading in Aſſumpſit what Pleas good.

(2 G. 1.) *Non Aſſumpſit*, &c.

AS to a Declaration in *Aſſumpſit*, *Vide Action upon the Caſe upon Aſſumpſit*, (H. 2, &c.)

Pleas in *Aſſumpſit* are, 1ſt. *Non Aſſumpſit*, Of *which Vide Action upon the Caſe upon Aſſumpſit*, (H. 5.)

2d. *Non Aſſumpſit infra ſex Annos.* Of *which, and Replications thereto, Vide Action upon the Caſe upon Aſſumpſit*, (H. 6, 7.)

3d, *Another Promiſe with a Traverſe of the Promiſe in the Declaration:* But this is a bad Plea, for it amounts only to the General Iſſue *Non Aſſumpſit*, *R.* 2 *Rol* 350. *Vide Ante*, (E. 14.)

[Not guilty is bad on Demurrer, tho' good after Verdict. *Marſham* v. *Gibbs. M.* 9 *G.* 2. *Str.* 1022.]

(2 G. 2.) Tender.

So the Defendant may plead Matter in Excuſe or Diſcharge: As, before a general Imparlance, he may plead a Tender, and always ready. *Lut.* 226, 238. *Clift.* 203.

[If the Tender is one Day after the Day of Payment in a promiſſory Note, it is not good. *May* v. *Cooper*, *M.* 8 *G. Fort.* 376.]

[After an Imparlance had by Executor, he ſhall not plead Tender by the Teſtator, and that Teſtator and Executor were and are always ready to pay. *Wood* v. *Ridge. M.* 5 *G.* 2. *Fort.* 376.]

[After general Imparlance, Leave to plead Tender may be in the firſt four Days of next Term. *Barnes* 343, 354.]

[On Want of Time for the Poſt, Declaration delivered late, Defendant may have Leave to plead Tender after the four Days. *Barnes* 351, 353, 357, 361, 362.]

[So if Plaintiff amends his Declaration, Defendant may have Leave to plead Tender as of laſt Term, or that Plaintiff accept his Tender of the preſent. *Barnes* 359.]

[Tender

[Tender cannot be pleaded after Rule for Time. *Barnes* 337.]
When and how this must be pleaded. *Vide Post*, (2 W. 28.)
So *Non Assumpsit* to Part, and Tender of the Residue. *Cl. Ass.* 104. *Clift* 202.
[Defendant cannot plead *Non Assumpsit* to all, and a Tender as to Part. *Dowgall* v. *Bowman*. *M.* 11 *G.* 3. 3 *Wils.* 145.]
To a Tender *after Imparlance*, the Plaintiff may plead that as an *Estoppel*. *Clift* 203.
Or, he may demur. *Lut.* 227, 239.
[If Tender *ante Diem Exhibitionis Billæ* is pleaded, Plaintiff shall not make up the Book with the general Memorandum, referring to the first Day of Term, which was before the Tender, but with a special Memorandum, according to the Fact. *Smith* v. *Key*, *M.* 12 *G.* *Str.* 638.]
[If Tender is pleaded, the *Placita* is no Evidence, but an Original must be produced. *Barnes* 165.]

(2 G. 3.) Within Age.

Within Age. *Lut.* 240.
When and how it must be pleaded, and Replications thereto, *Vide Post*, (2 W. 22.)—*Ante*, (2 C. 2.)
He cannot plead, *within Age*, and traverse the Promise. *R. Jon.* 146.

(2 G. 4.) Outlawry.

So, to an *Indebitatus Assumpsit*, where the Ground of the Action is forfeited by Outlawry, it may be pleaded in Bar, that the Plaintiff is outlawed. *Co. Lit.* 128 *b.* 3 *Lev.* 29. *Lut* 1512.
So, in a *Quantum Meruit*, tho' the Demand be not reduced to a Certainty. *R.* 2 *Vent.* 282. *Lut.* 1514.
So, in *Assumpsit*, upon a Bill of Exchange. *R.* 3 *Lev.* 29.
How it shall be pleaded in *Abatement*, *Vide Abatement*, (E. 2.)
How in Bar, *Vide Post*, (2 W. 24.)
If it be pleaded in Bar, and the Outlawry be reversed before the Day for bringing in the Record, there shall be only a *Respondeas Ouster*. *R. Yel.* 36. 2 *Cro.* 484.
Otherwise, if he fails to bring in the Record upon the Day, when there was no Reversal, for then there shall be final Judgment. *R. Cro. Car.* 566.

(2 G. 5.) Foreign Attachment.

So, to an *Assumpsit* the Defendant may plead a Recovery by a *Foreign* Attachment on a Plaint entred before the Original or Bill filed. *Lev. Ent.* 2.
And to an *Indebitatus Assumpsit* it shall be given in Evidence upon *Non Assumpsit*. *Lut.* 995.
If the Plaint was entred before the Original filed. *Per Trevor*, 1 *Sal.* 291. *Per Holt*, if there was a Condemnation before the Original. 1 *Sal.* 280.
[The Defendant must shew, that Plaintiff in foreign Attachment swore his Debt. *Hatton* v. *Ifemonger*, *M.* 12 *G.* *Str.* 641.]
When and how it shall be pleaded, *Vide Attachment*, (H.—I.)
The Plaintiff may reply to it that the Debt arose out of the Jurisdiction. *Lev. Ent.* 10. *R.* 3 *Lev.* 23.
Or may traverse the Custom.
Or demur.

(2 G. 6.) Composition.

So the Defendant may plead a Composition with his Creditors according to the Statute. *Lut.* 266. *Clift* 156.

And it ought to conclude, as it was a Releaſe. *Lut.* 271. for it is in the Nature of a Defeaſance. *Per Holt. Vide Comyns's Rep.* 112.)

And in Pleading, it is ſufficient to purſue the Words of the Statute. *R. inter Feltham and Cudworth.* (*Reported in Comyns's Rep.* 112.)

And there is no Need of a *Profert hic in Cur.' R. Mod. Ca.* 58. (*Vide Comyns's Rep.* 112.]

It is ſufficient, if it be for the equal Benefit of all the Creditors, tho' it be not ſo mentioned in the Compoſition. (*Vide Comyns's Rep.* 112.)

If he ſhews that he was Inſolvent; for it ſhall be intended that he continued ſo, if the Contrary does not appear. *R. Mod. Ca.* 58.

But he muſt ſhew that he was inſolvent at the Beginning of the Seſſions. *Mod. Ca.* 156.

(2 G. 7.) Statute againſt Uſury.

So the Defendant may plead, that the Contract, upon which the Action is founded, was Uſurious.

And if it appears by the Declaration, that the Contract was Uſurious, tho' it is not pleaded, there ſhall be Judgment againſt the Plaintiff. *Lut.* 273.

Bnt it ſhall not be intended uſurious, if it does not expreſsly appear. *R. Lut.* 273.

What ſhall be Uſury or not. *Vide Uſury*, (A.—B.)

How it ſhall be pleaded. *Vide Poſt*, (2 W. 23.)

(2 G. 8.) Statute againſt Gaming.

So, to an *Aſſumpſit*, the Defendant may plead the *St.* 19 *Car.* 2. 7. that the Money promiſed was won by Play, in which the Defendant at one Meeting loſt on Tick above 100 *l.* 1 *Lut.* 180. *Clift.* 200. 5 *Mod.* 3.

And if he loſt at one Meeting above 100 *l.* to ſeveral Perſons, it is within the Statute. *R.* 3 *Keb.* 671. *R. Lut.* 180.

What Play or Contract is illegal on this Statute, *Vide Juſtices of Peace*, (B. 42.)

How it ſhall be pleadad, *Vide Poſt*, (2 W. 26.)

(2 G. 9.) Accord or Arbitrament.

So to *Aſſumpſit* the Defendant may plead, *Accord* with Satisfaction. *R. Dy.* 75 *b.*

Or, Arbitrament. *Clift. Ent.*. 195.

What *Accord* ſhall be good, *Vide Accord*, (B.)

What Arbitrament, *Vide Arbitrament*, (E. 1, &c.)

How an *Accord* ſhall be pleaded, *Vide Accord*, (A. 1.—C.)

How an Arbitrament ſhall be pleaded, *Vide Accord*, (D. 1, 2.)

(2 G. 10.) Payment.

So the Defendant may plead Payment of Money *juxta Aſſumption'*. 2 *Bro. Ent.* 6. *R. Sal.* 516.

But this ſeems to amount to the General Iſſue. *R. cont. Sal.* 516.

Payment after the laſt Continuance. *Clift.* 202.

Non Aſſumpſit to one Promiſe, Payment to the other. *Bro. V. M.* 99. 102.

Payment of ſo much in Satisfaction. *Bro. V. M.* 93, 109.

[If a Man is indebted on ſeveral Accounts to the ſame Perſon, and pays Money to him, it ſhall be on that Account which he pleaſes to declare it to be; but if he gives no Direction, the Creditor may apply it to which Account he pleaſes. *Goddard* v. *Cox*, *T.* 16 *G.* 2. *Str.* 1194.]

But a Note or Bill given in Satisfaction, if it be not under Seal, is not good. 5 *Mod.* 136.

[A ſtated Account cannot be pleaded in Bar to an Action on Simple-contract. *Roades* v. *Barnes*, *M.* 30 G. 2. 1 *B. M.* 9.]

(2 G. 11.) *Inſimul Computaverunt.*

So to an *Aſſumpſit*, the Defendant may plead that, ſince the Promiſe made, he and the Plaintiff *inſimul computaverunt, et ſuper Compot' ill' ipſe inventus fuit* in Arrear ſo much, which he has paid. *Bro. V. M.* 100. 94. *Vide Action on the Caſe upon Aſſumpſit*, (G.)

Or he may tender the Arrears found on the Account in Court. 2 *Mod. Int.* 144.

But an Account without Payment or Releaſe is no Plea to an *Indebitatus Aſſumpſit*. *R.* 3 *Lev.* 238. for a *Choſe in Action* cannot diſcharge a Matter executed.

So *Inſimul Comput'* and Payment amount to the General Iſſue.

[On Account ſtated between Merchant and Merchant, the Balance carries Intereſt from the Time it is liquidated. *Blaney* v. *Hendrick*, *P.* 11 *G.* 3. 3 *Wilſ.* 205.]

(2 G. 12.) Bond for the Money.

So to an *Aſſumpſit* the Defendant may plead a Bond given by him for the Money demanded. *Cl. Aſſ.* 117. *Clift* 199. For the Bond determines the Contract. *Cro. Car.* 415. 2 *Cro.* 33, 234. *Vide Poſt*, (2 W. 46.)

Or that all the Counts are for the ſame Sum, and he has paid Part, and given a Bond for the Reſidue. *Ray.* 449. 2 *Jon.* 158.

So he may give it in Evidence upon *Non Aſſumpſit*, *Per Holt* 5 *An.*

And, if it be pleaded, it is bad; for it amounts to the General Iſſue. *R. Cro. El.* 201. *Semb.* 5 *Mod.* 314. *Vide Ante*, (E. 14.)

(2 G. 13.) Diſcharge from the Promiſe.

So the Defendant may plead, that the Plaintiff before the Breach diſcharged him from the Promiſe. *Clift.* 199.

When a Promiſe may be diſcharged or not, *Vide Action on the Caſe upon Aſſumpſit*, (G.)

(2. G. 14.) A Releaſe.

So he may plead a Releaſe after the Promiſe. *Cl. Aſſ.* 258.

A Releaſe to ſuch a Day *abſque hoc quod Aſſumpſit poſt. Bro. V. M.* 98.

But a Releaſe upon Performance of the Promiſe in Part *quoad hoc* does not diſcharge the Promiſe for the Reſidue. *R.* 2 *Rol.* 413. *l.* 20. *Vide Poſt*, (2 W. 30.)

(2 G. 15.) Performance.

So to an *Aſſumpſit* the Defendant may plead a ſpecial Performance.

If the Defendant pleads Payment, he muſt ſhew in certain what Sum he paid. *R. Mar. pl.* 120. *Vide Dan.* 77. *Vide Ante* (E. 5.)

But a Sum given in Satisfaction after the Day of Payment is no good Plea. *R.* 4 *Mod.* 250.

But if the Defendant pleads a ſpecial Performance: As, Payment, *&c.* upon an *Indebitatus Aſſumpſit*, it is bad; for this amounts to the General Iſſue only; yet he may plead it, for it admits a Promiſe. *R.* 1 *Sal.* 394.

So, if he pleads that by Agreement with the Plaintiff he paid to *A.* 1 *Mod.* 7.

That he performed all on his Part to be performed. *R.* 1 *Sal.* 394.

Or another Promiſe, and traverſes the *Aſſumpſit Modo et Forma*. *R.* 2 *Rol.* 350.

(2 G. 16.) Diſcharge upon Statute for Inſolvent Debtors.

So the Defendant may plead in Diſcharge of an Execution againſt his Body, &c. a Diſcharge according to the Statute for the Relief of Inſolvent Debtors. *Sal.* 521. *Lev. Ent.* 65.

And if the Plaintiff demurs to it, he ſhall have Judgment, but no Execution againſt his Body; for the Demurrer confeſſes the Diſcharge. *R.* 2 *Jon.* 165.

So the Plaintiff may take his Judgment immediately. *Clift* 156.

But he ſhall not be diſcharged, if the Defendant was indebted above the Sum of 500 *l.* by the *St.* 30 *Car.* 2. at the Time of his Diſcharge; tho' he was not in Execution for it 29 *May* 30 *Car.* 2. *R.* 2 *Jon.* 208.

So, it is no Plea, if it does not ſhew all Things done, which intitle the Juſtices to Juriſdiction. *R. Sal.* 521. 3 *Lev.* 151. *Per Holt, Skin.* 362.

[If *A.* indebted to *B.* by Simple-contract, becomes a Fugitive; inſolvent Act paſſes; *A.* returns, and five Months after is arreſted for this Debt, lies five Months in Priſon, and then gives Bond for the Debt, and afterwards ſurrenders, and is diſcharged by the inſolvent Act, he ſhall not plead it againſt the Bond; for he ought to have ſurrendered in reaſonable Time before he was arreſted, or when arreſted, have brought *Hab. Cor.* and been ſurrendred. *R. on Demurrer. Knight* v. *Preſton, P.* 7 *G.* 3. 2 *Wilſ.* 332.]

(2 H) Pleading in an Action for a Deceipt.

AS to the Original and Declaration in an Action for a Deceipt, or in an Action upon the Caſe in the Nature of Deceipt, *Vide Action upon the Caſe for Deceipt*, (F. 1, &c.)

To this Action the Defendant generally ſhall plead *Not Guilty*. *Pal.* 393.

And he may plead *Not Guilty* to an Action for Deceipt in levying a Fine in *C. B.* of Land in *Ancient Demeſne*, whereby it becomes Frank-Fee, tho' Matter of Record is mixt with Matter of Fact. *R. Tr.* 10 *An. in C. B.*

(2 I) Pleading in Trover.

AS to a Declaration in Trover, *Vide Action upon the Caſe upon Trover*, (G. 1, &c.)

The Defendant can plead Nothing but Not Guilty, or a Releaſe. *Vide ibidem.*

Not Guilty *infra ſex Annos*. *Lut.* 99.

(2 K) Pleading in Conſpiracy.

AS to the Original and Declaration in Conſpiracy, or Action upon the Caſe in the Nature of a Conſpiracy, *Vide Action upon the Caſe for Conſpiracy*, (C. 1, &c.) (2. K.) In Conſpiracy.

To this Action the Defendant ſhall generally plead Not Guilty.

Anciently it was uſual for the Defendants to plead a Juſtification ſpecially, ſhewing the Grounds of the Proſecution. 3 *Bul.* 284. 2 *Cro.* 193.

But it is not ſo ſafe, becauſe it is *tantamount* to the General Iſſue. *R.* that ſuch ſpecial Matter may be pleaded, for it is not ſafe to ſend it to *Lay Gens.* 20 *H.* 7. 11. *b.* *R.* 2 *Cro.* 131.

(2 L) Pleading in an Action for Defamation.

(2 L. 1.) Declaration.

AS to Declaration in *Scandulum Magnatum*, *Vide Action on the Case for Defamation*, (B. 3.)

For Slander of Title, *Vide Action on the Case for Defamation*, (C. 1, &c.)

As to a Declaration for Slander againſt a common Perſon, *Vide Action upon the Caſe for Defamation*, (G. 1, &c.)

(2 L. 2.) Plea.

(2 L. 2.) Not Guilty.

To an Action for Defamation the Defendant ſhall plead, *Not Guilty*. *Lut.* 1291.

Or may make a ſpecial Juſtification.

The Defendant ſhall plead, *Not Guilty*, if he did not ſpeak the Words in the Declaration.

Or, ſpoke them in a Courſe of Juſtice, or in a Manner not malicious. 2 *Cro.* 91. *Poph.* 69.

[On Not guilty pleaded, the Truth of the Words ſhall not be allowed to be given in Evidence, in Mitigation of Damages; it ſhall be pleaded, that Plaintiff may be prepared to defend himſelf. *This was reſolved on at a Meeting of all the Judges. Per Lee* C. J. *Underwood* v. *Parks*, *M.* 17 *G.* 2. *Str.* 1200.]

[Where the Words amount to Treaſon or Felony, Defendant cannot on general Iſſue prove the Truth in Mitigation. *Barnes* 195.]

So the Defendant may plead the Statute of Limitations.

Within Age. *Cont.* if he was ſeventeen. *Noy* 129.

So he may plead that the Plaintiff did not take the Oath mentioned in the Declaration. *Semb. Cro. El.* 169.

(2 L. 3.) In Juſtification. When allowed.

But if the Defendant can juſtify the Truth of the Words, he ſhall not plead, *Not Guiliy*, but muſt plead a ſpecial Juſtification: But this admits the Words, and aids Uncertainty in alledging them. *Jon.* 307.

So, if he can confeſs the Words, and by ſpecial Matter ſhew them not actionable, he ſhall not be put to the General Iſſue. 4 *Co.* 14. *a*. *Poph.* 67.

And therefore if the Words were ſpoken in another Senſe, the Defendant may plead it ſpecially. *R.* 4 *Co.* 14. *a*.

So, if ſpoken in a Court of Juſtice, as Council. *R.* 2 *Cro.* 90.

The Defendant may juſtify Words in *Scandalum Magnatum*, as well as in an Action by a Common Perſon. *R.* 4 *Co.* 13, 14. *Kelw.* 26. *R. Poph.* 66.

But it is no Juſtification for the Speaking, that there was a Common Fame that the Plaintiff was Guilty. *Dan.* 163.

That he was a Bankrupt, without Averment that he continued ſo. *R.* 2 *Cro.* 579.

(2 L. 4.) Replication to it.

To the Juſtification the Plaintiff by Replication ſhall ſay generally *de Injuriâ ſuâ propriâ, &c.* 1 *Sand.* 244.

Or he may ſay, that after the Crime of which he was accuſed, and before Speaking, he was pardoned. *Dan.* 163. *R. Mod.* 863, 872.

(2 L. 5.) How Juſtification ſhall be pleaded.

The Juſtification is not good, if the Defendant does not confeſs the Speaking of the Words alledged; As, if the Declaration is for ſaying *You ſtole my Cloth and half a Yard of Velvet*; Juſtification, that the Plaintiff, being a Taylor, had Velvet delivered him to make a Coat, which he made too little, *Ratione cujus* he ſaid, *you ſtole Part of my Velvet*, is not good: for it does not confeſs any Words; tho' it traverſes the Words alledged. *R. Cro. El.* 239.

So,

So, if the Declaration alledges an Accuſation of Returning on a Commiſſion the Examination of divers not ſworn, it is no Juſtification that he returned one. *R. Cro. El.* 623.

If the Declaration be for ſaying, *You are a Thief, and ſtole* 20 *l.* it is no Juſtification that he ſtole a Hen. *R.* 2 *Cro.* 676.

If the Juſtification be upon a Preſentment at a Leet, he muſt ſhew the Matter to be within the Juriſdiction. *R. Cro. El.* 492.

And that the Plaintiff knew the Preſentment falſe. *R. Cro. El.* 492.

So, the Juſtification is not good, if the Words with the Circumſtances, by which he juſtifies, are actionable. *R.* 1 *Brownl.* 5.

If the Defendant ſays that the Plaintiff was found Guilty of Perjury by Verdict, *&c.* if he does not ſhew Judgment thereon. *R.* 1 *Brownl.* 11.

(2 L. 6.) What ſhall be a good Juſtification.

If the Words accuſe of Felony, the Defendant in Juſtification may ſay *Quod furatus fuit, &c.* 1 *Sand.* 243, 4.

If of Perjury, that the Defendant was perjured in his Anſwer in *Chancery*. *Clift* 103.

Or when he was a Witneſs at *Niſi Prius* or Seſſions of the Peace.

Or when examined upon Interrogatories in *Chancery*.

That he falſely ſwore a Debt upon a foreign Attachment. *R. Bendl. pl.* 216. 1 *And.* 12.

That being Sheriff, he ſold the Office of Under-ſheriff, contrary to his Oath. *Bro. R.* 97.

That being upon a Jury in a Leet, the Plaintiff revealed Secrets, contrary to his Oath. *Bro. V. M.* 119.

So if there is a general Pardon, a Juſtification for Words, which accuſe of Treaſon, will be good, if the Plaintiff does not plead it; for he may be within the Exceptions. *R. Ray.* 23.

So, if the Defendant juſtifies, and a Verdict be thereon found for the Plaintiff, he ſhall not have Judgment, if the Words are not actionable. *R.* 2 *Lev.* 51.

(2 L. 7.) What not.

But the Defendant to an Action for Defamation cannot plead, that the Plaintiff *non fuit damnificatus Modo et Formâ*. *R. Dy.* 26. *b.*

So, it is no Plea, that the Plaintiff was not of good Fame *prout*. *Dan.* 172.

That there was a Common Fame that the Plaintiff was Guilty.

(2 M) Pleading in an Action for a Diſturbance.

AS to the Declaration and Pleas in an Action on the Caſe for Diſturbance, *Vide Action on the Caſe for a Diſturbance*, (B. 1, 2.)

(2 N) Pleading in an Action for a Nuſance.

AS to the Declaration in an Action on the Caſe for a Nuſance, and Pleas thereto, *Vide Action on the Caſe for a Nuſance*, (E. 1, 2.)

As to Proceedings in a *Quod permittat*, *Vide Action on the Caſe for a Nuſance*, (D. E, &c.)

(2 O) Pleading in an Action for a Misfeaſance.

THE Declaration in an Action for Misfeaſance in an Officer muſt ſhew, that the Defendant was an Officer, that it was his Duty to do, and that he acted contrary to his Duty.

As, if it be for a falſe Return of a Writ for an Election to *Parliament*, he muſt ſhew that ſuch Writ iſſued and was delivered to the Defendant, being Sheriff, who proceeded to the Election *ſecundum Exigent' Brevis*, and that the Plaintiff *fuit debito Modo elect'*, but the Defendant returned another, elected.

P. 2 *An. Sir William Hale* v. *Owen.* (*Reported in Comyns's Rep.* 132. 1 *Ld. Raym.* 904.)

But, if the Declaration ſhews the Misfeaſance, it is ſufficient, tho' it omits ſeveral Circumſtances, not material: As, if the Action be for tearing the Seal from a Deed, whereby an Annuity or Rent was granted, tho' it does not ſay, that it was the Seal of the Grantor, or what Seal, or that thereby he loſt his Annuity, or the Deed was void, or whether it was an Annuity or Rent-Charge. *R.* 2 *Cro.* 255.

To an Action upon the Caſe for a Misfeaſance, the Defendant ſhall plead, *Not Guilty. Cro. El.* 569.

Or not Guilty *infra ſex Annos. Lut.* 99.

(2 P) Pleading in an Action for Negligence.

(2 P. 1.) In his Office, &c.

IN an Action againſt a Sheriff, *&c.* for an Eſcape, the Plaintiff muſt ſhew a Judgment againſt him who eſcaped. *R.* 1 *Lev.* 191.

And ought to ſay directly that he recovered, and not, *quod cum recuperaſſet. Semb.* 1 *Sid.* 306.

If an Eſcape be out of the *Counter* upon a Plaint before one Sheriff of *London*, the Action ſhall be againſt the two Sheriffs. *R. Carth.* 145.

But in an Action for an Eſcape, the Plaintiff need not ſhew how the Debt in the Original Action became due. *Lut.* 110. *Vide ante,* (E. 18.)

Nor the Original, and all the Proceedings thereon, for it is ſufficient to begin *quod cum recuperaſſet, &c. R. Cro. El.* 877.

Nor ſhew the Original, *&c.* tho' the Eſcape was of one outlawed by *meſne* Proceſs, for it is ſufficient to ſay, *quod cum implacitaſſet, &c. Lut.* 111.

Nor ſhew that he did not find Bail, tho' the Precept in the *Counter* be *niſi interim inveniat Manucaptores*; for it will come from the other Side, if he found them. *R. Sho.* 162.

Nor ſay, that the Debt was not ſatisfied, for it ſhall not be ſuppoſed. *R.* 1 *Rol.* 47.

To this the Defendant ſhall generally plead, *Not Guilty.*

But if the Action be for not returning a Writ, *&c.* the Defendant may plead *quod pertinuit ad alium.*

So in an Action for an Eſcape, the Defendant may plead *Non permiſit ire ad Largum.* 5 *Co.* 89. *a.* 10 *Ed.* 4. 10. *b.*

Or, *Nul tiel Record. R. Hob.* 209.

So, *quod non arreſtavit. Aſh. Ent.* 14.

Quod recenter inſecutus fuit. 3 *Co.* 52. *Vid. Ent.* 195, 198.

And by the *St.* 8 & 9 *W.* 3. 27. it ſhall not be allowed in Evidence, without Plea.

By the *ſame Statute,* Plea of freſh Suit ſhall not be allowed without an Affidavit that the Eſcape was without Conſent.

That he was reſcued after an Arreſt upon meſne Proceſs. Lut. 130. *R.* 3 *Lev.* 46. *R.* 2 *Lev.* 144. *R.* 2 *Cro.* 419. *R. cont. Cro. El.* 868. *R. acc.* 16 *Ed.* 4. 3. *Vide infra.*

A *Reſcous* may be pleaded, without ſaying that he returned the *Reſcous. R.* 3 *Lev.* 46. 2 *Lev.* 144.

If an Action be for a voluntary Eſcape, he may take by Proteſtation, that it was not voluntary, and plead *recent' inſecut'. R.* 1 *Vent.* 217.

There is no Need to traverſe that the Eſcape was voluntary. *R. Lat.* 201.

But the Defendant cannot ſay that the Party afterwards appeared at the Return of the Writ. *Lut.* 72, 73.

So the Defendant cannot plead a *Reſcous* to an Eſcape upon a judicial Proceſs. *R.* 3 *Lev.* 46. *R. Mo.* 852.

Nor upon *meſne* Proceſs. *Mo.* 852. *Vide ſupra.*

Tho'

Tho' the Arreſt be upon a *Latitat*, whereon the Cauſe of Action does not appear. *Mo.* 852.

But he ſhall not plead, in an Action for not keeping a Ferry where he ought, that he erected a Bridge there. *Semb.* 1 *Sal.* 12. *Vide Poſt*, (2 S. 2.)

(2 P. 2.) In keeping a Dog, &c.

A Declaration for a Neglect in keeping his Dog, Horſe, Cattle, &c. muſt ſay that the Defendant was *Sciens* of the miſchievous Quality. *Vide Action on the Caſe for Negligence*, (A. 5.)

So, if *Sciens*, or *Scienter*, is omitted, it will be bad after Verdict. *R. Sal.* 662.

But *quod habuit Suem ad mordendum Animalia conſuet'* will be well after Verdict; for it ſhall be intended to have been proved that they were Animals of which the Defendant had Notice, and the Biting of which was a Damage and Loſs to the Plaintiff. *R. Sal.* 662.

To ſuch Action the Defendant ſhall plead *Not Guilty*.

Or that the Dog made an Aſſault upon his Dog.

So, to every Action on the Caſe for Misfeaſance or Nonfeaſance, the Defendant ſhall plead *Not Guilty*.

But in an Action on the Caſe for Nonfeaſance, it was reſolved, that the Defendant ſhall not plead *Not Guilty*, tho' in an Action for Misfeaſance he may; for *Not Guilty* to Nonfeaſance are two Negatives, which do not make an Iſſue. *Cro. El.* 569.

But it is no Plea, that he made the Thing more beneficial for the Plaintiff; for this being a voluntary Act, it does not excuſe him for the Neglect of his Duty: As, in an Action upon the Caſe for not keeping a Ferry, it is no Plea, that he erected a Bridge, which was more commodious. *R. Sho.* 257.

(2 P. 3.) In keeping Fire.

A Declaration in an Action, founded on the Cuſtom of the Realm, for not taking Care of his Fire, muſt ſhew the Cuſtom of the Realm, and the Damage by the Defendant's Neglect. *Aſh. Ent.* 23, 56. *Vide Action upon the Caſe*, (B. 2, 3.)—*For Negligence*, (A. 6.)

And therefore, if it enlarges to foreign Matter, it is bad. *Lut.* 90.

But it need not ſay, *Time whereof, &c.* for *ſecundum Legem et Conſuetudinem Regni* is ſufficient. *R.* 2 *H.* 4. 18. *b.* *Vide Action on the Caſe for Negligence*, (A. 6.)

And it is ſufficient, if it ſays, *ne Dampnum alicui eveniat*, tho' it is not, *alicui Vicino.* 2 *H.* 4. 18. *R.* 3 *Lev.* 359.

So, if it ſays, *Ignem ſuam*, tho' he has no Property in the Fire. 2 *H.* 4. 18. *a.*

To this Action the Defendant may plead, *Not Guilty*.

So he may plead *Quod Ignotus combuſſit Meſſuagium per quod*, and traverſe the Neglect in keeping his Fire. 1 *Bro. Ent.* 29.

By the *St.* 6 *An.* 31. If an Action be brought againſt any, in whoſe Houſe or Chamber any Fire accidentally began, or for any Thing done by virtue of that Act, the Defendant may plead the general Iſſue, and give in Evidence the ſaid Act; and if the Plaintiff be nonſuit, diſcontinue, or have a Verdict againſt him, he ſhall pay treble Coſts.

(2 Q.) Pleading in an Action againſt a common Innkeeper.

AS to the Declaration againſt a Common Innkeeper for the negligent Keeping of the Goods of his Gueſt, *Vide Action upon the Caſe for Negligence*, (B. 1.)

To this Action the Defendant ſhall plead, *Not Guilty*.

Tho' he has Matter of Excuſe: As, that his Inn was full, &c. 1 *And.* 29.

(2 R) Pleading in an Action against a common Carrier.

AS to the Declaration in an Action against a Common Carrier and Pleas thereto, *Vide Action on the Case for Negligence*, (C. 2, 3.)

(2 S) Proceeding in Actions upon ſeveral Statutes.

WHEN an Action lies upon a Statute, or not, *Vide Action upon Statute*, (A. 1.—B.)

How it ſhall be ſued by *Qui tam, &c.* or the Party grieved, *Vide Action upon Statute*, (E.—F.)

When the Statute ſhall be recited or not, and how, *Vide Action upon Statute*, (G, H, I.)

(2 S. 1.) Upon the Statute of *Winton* 13 *Ed.* 1. of *Hue and Cry.*

Vide Hundred. (C. 1, &c.)

If an Action be commenced upon the Statute of Hue and Cry, 13 *Ed.* 1. The Plaintiff muſt take out his Original.

And the Suit in *B. R.* as well as in *C. B.* muſt be commenced by Original; for the Inhabitants of a Hundred cannot be in the Cuſtody of the *Marſhal*. *R.* 3 *Keb.* 126. *Vide* 2 *Sand.* 375. 4 *Mod.* 296.

And the Original uſually recites the Statute. *Th. Br.* 141. 1 *Bro. Ent.* 99. 2 *Sand.* 374. 4 *Mod.* 296.

*In *Leonard*, it is by Miſtake laid, *half a Year.*

The Original ſhall be teſted forty Days * after the Robbery, otherwiſe it is Error. *R.* 2 *Leo.* 12. *Vide Poſt*, (2 S. 4.)

And within a Year after the Robbery. *R.* 1 *Brownl.* 156.

But, if the Day of the Robbery be miſtaken, it may be amended. *R.* 1 *Brownl.* 156.

If Several are robbed together, they cannot join in an Action againſt the Hundred, except where they are Joint-Owners of the Money ſtolen. *R. Dy.* 370. *a.* 2 *Leo.* 12.

[It is amendable, not being a penal Action. *Merrick* v. *Hundred of Oſſulſton*, *H.* 11 *G.* 2. *B. R. H.* 409. *Andr.* 115.]

(2 S. 2.) Declaration muſt be againſt the Inhabitants of the Hundred generally.

The Declaration muſt be againſt the Inhabitants of the Hundred generally.

For if it is againſt any by Name, and All are not named, it is bad. *R.* 2 *Keb.* 126. *Adm. cont. Bend. pl.* 157.

Declaration need not recite the Original at large. *Per Rule* 1654. *Mills* 26.

Declaration need not recite more of the Statute than is pertinent to the Action. *R.* 2 *Vent.* 215. *Vide Action upon Statute*, (I.)

And therefore may omit the Part of the Act concerning the Burning of Houſes. 2 *Vent.* 215.

(2 S. 3.) Reciting the Statute.

And if it recites the Senſe, tho' not the exact Words of the Statute, it is ſufficient. *Vide Action upon Statute*, (I.)

As, if it is, *quod reſpond' pro Malefactoribus*, where the Statute ſays *pro Corporibus Malefactorum*. *R.* 2 *Vent.* 215.

(2 S. 4.) Muſt ſhew the Time of the Robbery.

The Declaration muſt ſhew the Time, when the Robbery was committed, whereby it may appear that the Action was commenced after forty Days ſince the Robbery. *R.* 2 *Leo.* 12.

And the forty Days for taking the Thieves are limited by the Statute of *Winton*, (for the 28 *Ed.* 3. 11. is only a Confirmation thereof) and therefore they, who ſay that half a Year was allowed by the Statute of *Winton*, are miſtaken. *R.* 3 *Lev.* 320.

(2 S. 5.) And that it was within the Hundred, *&c.*

So the Declaration muſt ſhew the Robbery to be within the Hundred, and upon the Highway.

But

But tho' the Pariſh be miſtaken, if it be within the Hundred, it is ſufficient. *R.* 2 *Leo.* 175. *Ow.* 7.

And if the Pariſh be not alledged within the Hundred, it is good after a Verdict. *R.* 3 *Mod.* 258.

So, if it does not appear that the Robbery was in the Highway, it ſhall be aided after Verdict. *R.* 3 *Mod.* 258. *Sho.* 60. *R.* 1 *Mod.* 221. *Carth.* 71. *Vide Hundred*, (C. 2.—4.)

So, if it does not appear that the Robbery was by Day-light. *R.* 3 *Mod.* 258. *Carth.* 71.

(2 S. 6.) Muſt alledge Oath before a Juſtice of Peace.

So the Declaration muſt alledge that he made Oath before a Juſtice of Peace, purſuant to the *St.* 27 *El.* 13. that he did not know the Robbers. *Cont.* for the Declaration need not ſhew it. *Sal.* 614. *Vide Hundred*, (C. 4.)

[It is not neceſſary to aver that the Juſtice was ſuch at the Time. *Merrick* v. *Hundred of Oſſulſton*, *H.* 11 *G.* 2. *B. R. H.* 409. *Andr.* 115.]

If the Robbery was by four, Oath, *that he did not know them*, is not ſufficient, without ſaying *nec eorum aliquem*. *Per* 3 *J.* *Noy* 21. *Dub.* 3 *Lev.* 328. 12 *Co.* 62.

(2 S. 7.) And Notice.

So the Declaration muſt alledge that the Plaintiff gave Notice of the Robbery.

[It is not neceſſary to aver, that the High-conſtable was the only one, nor that he was ſuch at the Time. *Merrick* v. *Hundred of Oſſulſton*, *H.* 11 *G.* 2. *B. R. H.* 409. *Andr.* 115.]

(2 S. 8.) And Property of the Goods.

So the Declaration muſt alledge, that the Plaintiff has the Property of the Goods ſtolen.

If a Servant be robbed of his Maſter's Money, he may declare *de Pecun' ipſius Querent' propr'*. *R.* 4 *Mod.* 303. *R.* 2 *Leo.* 82.

And if the Plaintiff declares *de Pecun' in Cuſtodia ipſius Querent'*, without ſaying *de Pecun' Querent' propr'*, it is bad. *R.* 2 *Sand.* 379.

But where the Plaintiff declares that he was robbed *de Bonis ipſius Querent' propriis*, and of other Goods in *Cuſtodia Querent'* on Demurrer to the whole Declaration, the Plaintiff ſhall have Judgment for ſo much as is well alledged, and ſhall be barred only for the Reſidue. *R.* 2 *Sand.* 379. *Vide ante*, (C. 32.)

(2 S. 9.) And Particulars of them.

So the Plaintiff muſt name the Goods ſtolen in his Declaration particularly; for it is not ſufficient to ſay, *quod diverſa Bona ceperunt*. *R.* 2 *Sand.* 379. *Vide ante*, (C. 21.)

But he need not in the Writ, if he particulariſe them in his Declaration. 2 *Sand.* 379.

And as much Certainty as in *Trover*, *&c.* is ſufficient. 2 *Sand.* 263.

(2 S. 10.) Muſt conclude *contra Formam Statuti*. *Vide Indictment*, (G. 5, 6.)

The Declaration muſt conclude *contra Formam Statuti*, for *contra Formam Statutorum* is bad, the Action being founded upon the *St. Wint.* 13 *Ed.* 1. only, and not on the *St.* 27 *El.* *R. Yel.* 116. *Ag.* 1 *Vent.* 235.

But *Contra Formam Statuti*, without more, is ſufficient; for it ſhall be intended the *St. of Winton*. *R. Yel.* 116. *Noy* 125. 2 *Cro.* 187. *Merrick* v. *Hundred of Oſſulſton*, *H.* 11 *G.* 2. *B. R. H.* 409. *Andr.* 115.

(2 S. 11.) Plea.

To an Action againſt an Hundred the Defendants may ſuffer Judgment by Confeſſion, *or Non ſum informatus*.

Or the Defendants may plead *Not Guilty*. *Vid. Ent.* 211. 1 *And.* 158.

So they may plead, that the Plaintiff did not make *Hue and Cry* to give Notice of the Robbery. *Co. Ent.* 350. *a.* *Bend. pl.* 157.

But *Semb. Cont.* For the Plaintiff need not make *Hue and Cry*, but by the *St.* 27 *El.* 13. he ought to give Notice to the next *Vill*, or Hamlet, and this ſhall be proved on *Not Guilty*. *Vide Hundred*, (C. 2, 4.)

So they may plead that they took one of the Robbers on freſh Suit. 1 *Vent.* 118. *Vide Hundred*, (C. 4.)

But it is no Plea for the Hundred, that they made freſh Suit, if they did not take any of the Robbers. *R. Dy.* 370. *a.*

(2 S. 12.) *Venire facias.* If the Defendants plead, after Iſſue, a *Venire facias* ſhall be awarded to the next Hundred. *Theſ. Br.* 144.

(2 S. 13.) Judgment. As to Judgment againſt the Hundred, *Vide Hundred*, (C. 5.)

If there be Judgment for the Hundred, the Inhabitants of the Hundred may ſue for Coſts by Debt or *Scire facias* on the Judgment; for, tho' no Corporation, they may have an Action *quoad hoc*. *R. F,g.* 296.

Or, if the Plaintiff be in Execution for the Coſts, and eſcapes, they may have an Action againſt the Sheriff for the Eſcape. *Ibid.*

[If the Record is ſaid to be taken before the *Secondary* to the Chief Clerk, it is well; and the Court will take Notice without Averment, that he was *then* Officer. *Merrick* v. *H. of Oſſulſton, H.* 11 *G.* 2. *B. R. H.* 409. *Andr.* 115.]

(2 S. 14.) Upon the *St.* 2. (or 2 & 3) *Ed.* 6. 13. for Tithes.

(2 S. 14.) By whom it lies. Action of Debt lies on the *St.* 2. (or 2 & 3) *Ed.* 6. 13. for the treble Value for not ſetting out his predial Tythes. 2 *Inſt.* 650, 612. *R. Cro. El.* 608, 613, 621. *R. Mo.* 710.

But it muſt be by the Party alone, and not by *Qui tam, &c.* *R. Mo.* 911. *Cro. El.* 621. *Semb. Sav.* 63.

And may be by the Rector, or by the Farmer of the Rectory. *R.* 2 *Cro.* 70. *Mo.* 915.

And may be by an Executor for not ſetting out Tythes in his Teſtator's Time.

So, it lies by the Huſband alone, ſeiſed in Right of his Wife, for Tythes ariſing after his Marriage. *Cont. Noy* 136.

Or Huſband and Wife may join. *R. Noy* 136. *Adm. Mo.* 912.

So it lies by a Farmer of two Parts of a Rectory by one Title, and of the third Part by another Title; for he declares as Farmer, and need not mention the Title. *R. Yel.* 63. *Mo.* 915. 2 *Cro.* 68. 1 *Brownl.* 86. *Noy* 3.

So, by two Farmers of the ſame Rectory. 2 *Cro.* 70. *Mo.* 915.

But two, who claim by ſeveral Titles, cannot join in Debt upon this Statute. *R. Yel.* 63. 1 *Brownl.* 86.

As, if one claims two Parts, and the other the third Part of the ſame Rectory. *R. Yel.* 63.

(2 S. 15.) Againſt whom. Debt lies on the *St.* 2 (or 2 & 3) *Ed.* 6. 13. againſt two Joint-tenants, who occupy together. *R. Hut.* 121.

Or, againſt one Joint-tenant, or Tenant in Common, only, if he occupies the Whole. *Ibid.*

But it does not lie againſt ſeveral Tenants for their ſeveral Tythes. *R. Yel.* 63.

(2 S. 16.) Declaration. The Plaintiff in his Declaration need not recite the Statute. *Per Rule* 1654. *Mills* 27. *Per Holt, Sho.* 337.

And if it be recited to be made at a Parliament, 4 *Nov.* 2 *Ed.* 6. when the Parliament began 1 *Ed.* 6. and ſo was prorogued till 4 *Nov.* 2 *Ed.* 6. yet it ſhall be allowed, for there are ſeveral Precedents ſo. *R. Yel.* 127. *Vide Dy.* 171. *a.*

And if it be recited *Agreavit cum Rector', Firmar' aut al' Proprietar'*, where the Statute ſays, *other Owner, Proprietor, &c.* ſo *Owner* is omitted, it is not material. *R.* 2 *Cro.* 362.

The Plaintiff, in his Declaration, need not ſhew any Title; for it is ſufficient to ſay *Quod cum ſit Rector, &c.* or *Firmar' et Proprietar' Decimarum, &c.* *R.* 2 *Bul.* 66. 2 *Cro.* 318. *R.* 2 *Cro.* 362, 437. *R.* 2 *Bul.* 228. *D. Yel.* 63. 1 *Brownl.* 86.

And, if he ſhews a Grant to himſelf, he need not ſay, it was by Deed, tho' Tythes cannot be granted without Deed. *R.* 2 *Bul.* 228. 1 *Rol.* 13.

So,

So, if he claims by Leaſe under the King's Patentee, he need not ſhew the Patent.

So, it is ſufficient that the Plaintiff alledges himſelf *Proprietar'*, without ſaying *conjunctim*, or in Common.

So, if he ſays that he is *Proprietar' Decimarum et* 60 *Acrar' in D.* without ſaying which in certain. *R. H.* 7 *Car. Rot'* 587. *in B. R.*

So, it is ſufficient, if he ſays that he is Rector of *A.* and *Ratione inde* ought to have Tythes out of the Pariſh of *B.* which is another Pariſh. *R. Hard.* 173.

The Plaintiff in his Declaration uſually alledges that the Plaintiff is *Proprietar'*, *&c.* that the Defendant occupied Lands within the Pariſh, and ſowed them, and reaped and carried away his Grain, without ſetting out the Tythes or Agreement with the Rector, *&c.* for them.

So, if he claims as Rector, *&c.* he muſt alledge the Tithes taken to belong to the Rectory. *R. Jon.* 322.

But the Nonpayment of the Treble Value is the *Giſt* of the Action, and the Poſſeſſion, and the whole Declaration precedent is but Inducement, and therefore, if it be alledged as Recital, the Declaration is good. *R.* 2 *Cro.* 362.

So the Declaration is ſufficient; tho' it does not ſhew that the Defendants occupy jointly or in common.

Tho' it does not ſhew the Kinds of Grain ſown. *R.* 2 *Cro.* 438.

Nor by whom it was ſown. *R.* 2 *Cro.* 362.

Or if it alledges the Time of the Severance before the Sowing.

Or more than a Year after; for it is poſſible. *R.* 2 *Cro.* 362.

So, if it does not alledge the Time of Severance, but ſays, that 30 *Sept. ſic inde poſſeſſionat' meſſuit*; for it ſhall be intended that he ſevered the ſame Day, on which the Poſſeſſion is alledged. *R.* 2 *Cro.* 362.

So, if the Day of Severance be coupled with the Removal of the Grain. *Ibid.*

Or, if the Term was expired before the Day alledged of the Removal. *R.* 2 *Cro.* 324.

So, if the Quantity of the Land ſown and the Quantity ſevered vary: As, if he ſays *Quas quidem* 30 *Acr'* for 40, the Word *thirty* ſhall be rejected as Surpluſage. 1 *Sid.* 135.

So, if the Declaration does not ſay, that the Defendant did not agree with the Plaintiff, it will be good after Verdict, tho' not upon a Demurrer. *R. Carth.* 304.

So, it is ſufficient, that the Declaration demands the ſingle Value, for it ſhall be trebled by the Jury or Court. 2 *Rol.* 54, 55.

And, if it adds the treble Value, and it is miſtaken, it will be good. 2 *Rol.* 55.

The Plaintiff muſt alledge in his Declaration what brings the Party within the Statute, and therefore he muſt alledge him to be the Subject of the King that now is.

If he recites the Statute, and ſays, that he is *Subditus dicti Domini Regis*, it is bad, for this refers to *Ed.* 6. *Per* 3 *J.* 2 *Cro.* 325. *Vide infra.*

He muſt alledge a *Venue*, where the Tithes are alledged to be carried away without Severance, for this is the *Giſt* of the Action. *R. Yel.* 127.

So, it is ſufficient, if he alledges the Value of the Tithes to be 11 *l. & ſic Actio accrevit ad habendum pro triplici Valore* 32 *l.* The Miſcaſting is no Prejudice. *R.* 2 *Cro.* 499. *Vide Ante,* (C. 84.)

So, if he alledges that the Defendant is Occupier, it is ſufficient, tho' he does not ſay that he is a Subject; for it implies as much. *R. Hard.* 173. *Vide ſupra.*

So, if there are two Plaintiffs, and they alledge that the Defendant did not agree with them, it is ſufficient, without ſaying *vel eorum altero*, for it is implied. *R.* 2 *Cro.* 70.

To Debt upon the *St.* 2 (or 2 & 3) *Ed.* 6. 13. the Defendant may plead, *Nil debet*. *R. Hob.* 218. *Cro. El.* 608. (2 S. 17.) Plea.

Or may plead, *Not guilty*. *R. Mo.* 914, 302. *R. Cro. El.* 621.

So

So an Agreement with the Plaintiff for his Tithes for three Years, tho' it be not by deed; for it will be good between the Parties, and ſhall be a Bar by the Statute, tho' it does not paſs the Right of the Tithes. *R. Ray.* 14.

But a Plea, that after the Tithes were ſet out the Owner of the Soil took them *Damage feaſant*, is not good; if it does not ſhew *Quamdiu* they remained on the Land. *Lat.* 8.

(2 S. 18.) Action upon the *Stat.* 1 *R.* 3. 3. for Seiſure of a Felon's Goods before Conviction.

If Action be upon the *St.* 1 *R.* 3. 3. for taking the Goods of one accuſed of Felony before Conviction, the Plaintiff muſt recite the Statute, and ſhew the Breach. *Lut.* 132.

(2 S. 19.) Upon the *Stat.* 1 & 2 *Ph. & M.* 12. for 5*l.* for driving a Diſtreſs three Miles, &c.

If Action be upon the *St.* 1 & 2 *P. & M.* 12. for driving a Diſtreſs *out of the Hundred, &c. above three Miles*, the Defendant may plead, *Not Guilty*. *Co. Ent.* 44. *b.*

That the Taking was by *Capias in Withernam*. *Co. Ent.* 44. *a.*

(2 S. 20.) Upon the *Stat.* 8 *H.* 6. 9. for a forcible Entry.

If Action be upon the *St.* 8 *H.* 6. 9. for a forcible Entry, or Detainer, the Plaintiff in his Declaration muſt recite the Statute. *Lut.* 1548. *Co. Ent.* 44. *b.* 315. *b.* *Vide Action upon Statute*, (G.)

To this Action the Defendant may plead, *Not Guilty*. *Cl. Aſſ.* 34.

Non eſt ingreſſus contra Formam Statuti. *Co. Ent.* 46. *a.*

Non expulit nec diſſeiſivit Querentem.

(2 S. 21.) Upon the *Stat.* 23 *H.* 6. 8. for being Under-Sheriff two Years together.

If an Action be upon the *St.* 23 *H.* 6. 8. for uſing the Office of Under-Sheriff two Years together, the Plaintiff muſt recite the Statute and the Offence. *Lut.* 193. *Lev. Ent.* 135.

He need not aver that the Sheriff had no Eſtate of Freehold in the Office. *Semb. Lut.* 197.

(2 S. 22.) Upon the *Stat.* 21 *H.* 8. 13. againſt a Spiritual Perſon.

(2 S. 22.) For taking a Farm.

If an Action be upon the *St.* 21 *H.* 8. 13. againſt a Spiritual Perſon for taking a Farm, the Plaintiff muſt recite the Statute. *Lut.* 135. *Cont. Bro. Action ſur Statute* 4. *Vide Action upon Statute*, (G.)

To this the Defendant may plead *Not Guilty*.

That, not having *Glebe*, he took it for Suſtentation of his Family. *Lut.* 136.

Quod non tenuit ad Firmam contra Formam Statuti. *Sav.* 32.

And upon the laſt Plea, he may give in Evidence that it was for the Suſtentation of his Family. *Per 2 J. Baldwin cont. Bro. Action ſur Statute* 3. *Sav.* 32.

(2 S. 23.) For Non-Reſidence.

If an Action be upon the *St.* 21 *H.* 8. 13. for Non-reſidence, it is uſual to recite the Statute. *Rob. Ent.* 414. *Lut.* 138.

(2 S. 24.) Upon the *Stat.* 33 *H.* 8. 9. for uſing unlawful Games.

If an Action is brought upon the *St.* 33 *H.* 8. 9. for uſing unlawful Games, the Plaintiff may recite the Statute and ſhew a Breach. *Lut.* 133.

To this Action the Defendant may plead *Quod non cuſtodivit Domum Luſorum, &c. Lut.* 134.

(2 S. 25.) Upon the *Stat.* 13 *R.* 2. & 2 *H.* 4. 11. for ſuing in the Admiralty for a Matter not *ſuper altum Mare.*

If an Action be upon the *St.* 13 *R.* 2. 5. 15 *R.* 2. 3. & 2 *H.* 4. 11. for ſuing in the Admiralty for a Thing not done *ſuper altum Mare*, it muſt be by *Qui tam, &c. Dy.* 159. *b. Vide Action upon Statute*, (E. 1, &c.)

The Plaintiff in his Declaration muſt ſurmiſe the Effect of the Libel, and ſuggeſt that the Matter aroſe *infra Corpus Com'*, and not, *ſuper altum Mare. Dy.* 159. *b.*

And in Actions upon theſe Statutes, the Party ſhall recover double Damages, and the King 10*l. Dy.* 159. *b.*

And the Coſts as well as the Damages ſhall be doubled. *Dy.* 159. *b. Vide Coſts*, (C. 1, &c.)

(2 S. 26.) Upon the *Stat.* 5 *El.* 14. for Forgery.

If an Action be upon the *St.* 5 *El.* 14. for Forgery, he muſt recite the Statute and the Offence. *Lut.* 191.

(2 S. 27) Upon the *Stat.* 8 *El.* 2. for ſuing in another's Name, without his Conſent.

If an Action be upon the *St.* 8 *El.* 2. for ſuing in another's Name without his Conſent, the Plaintiff muſt recite the Statute, and ſhew the Offence. *Lut.* 166.

And it well lies, tho' there be no Conviction before, for the Proof may be in the ſame Action. *R.* 2 *Cro.* 188.

But an Attorney is out of the Statute. *Semb. Lut.* 169.

So, it does not lie for a Suit in *C. B.* for it is not mentioned in the Statute. *R. Lut.* 169.

(2 S. 28. Upon the *Stat.* 25 *Car.* 2. 2. for not taking the Teſt.

If an Action or Information be upon the *St.* 25 *Car.* 2. 2. for not taking the Teſt, the Plaintiff muſt expreſſly alledge that the Defendant was admitted to the Office at ſuch a Time, and that he did not take the Oaths, *&c.* at ſuch a Time; for it is not ſufficient to ſay, that he was an Officer, and never took the Oaths. *Lut.* 162.

So he muſt demand the Penalty by expreſs Words, *per quod Actio accrevit ad habendum, &c. Dub. Lut.* 163.

Muſt ſhew a Conviction prior to an Action or Information for the 500*l.* Penalty. *Semb. Lut.* 163. It was not ſhewn *Clift* 123. But it was *in Sir Edward Hale's Caſe, Clift* 133, 4.

So he muſt expreſſly aver, that the Defendant exerciſed the Office after the Time limited for taking the Oaths. *Lut.* 163.

So he muſt recite the Oath tendred conformable to the Statute. *R. Ray.* 374, 5.

And the ſame Law ſhall be in an Information for not taking the Aſſociation. *Clift Ent.* 392, 393.

To this Action, or Information, the Defendant may plead that he took the Oaths purſuant to the Statute. *Lut.* 161.

If the Defendant pleads that he took the Oaths, he muſt conclude *prout patet per Recordum. Semb. Lut.* 163.

He muſt ſhew that he was admitted to the Office, when he took them. *Lut.* 163.

So, if a Man neglects taking the Oaths, *&c.* after Admiſſion to an Office, he will be an Officer from the Time of his Admiſſion till three Months expire.

And after Neglect he may maintain an Action againſt a Stranger for the Profits of the Office received during that Time. *R. Lut.* 910.

(2 S. 29.) Upon the *Stat.* 2 *W.* & *M.* 5. for *Reſcous* of a Diſtreſs.

If an Action be for *Reſcous* of a Diſtreſs upon the *St.* 2 *W.* & *M.* 5. the Plaintiff muſt ſhew the Demiſe, Diſtreſs for Rent arrear, and *Reſcous*. *Lut.* 213.

He muſt ſhew the whole Subſtance of the Leaſe. *Semb. Mod. Ca.* 215.

And if he ſays that he was ſeiſed in Fee and leaſed, he muſt prove a Seiſin in Fee. *R. Mod. Ca.* 215.

But he need not ſay that Notice was given; for it is Nothing to the Defendant, tho' neceſſary to the Owner. *R. Lut.* 214.

Nor that the Corn diſtrained was threſhed, or unthreſhed. *Ibid.*

He need not ſhew a Thing collateral to the Leaſe, as, that he gave a Quarter's Warning. *Per Holt, Mod. Ca.* 215.

(2 S. 30.) Upon the *Stat.* 4 & 5 *W.* & *M.* 8. for apprehending Highwaymen.

If an Action is brought upon the *St.* 4 & 5 *W.* & *M.* 8. againſt the Sheriff for Non-payment of the Allowance for apprehending Highwaymen, *&c.* the Plaintiff muſt recite the Statute, and every Thing that intitles him to the Allowance within the Statute. *Clift* 120.

(2 T) Pleading in Account.

AS to Proceſs, Declaration, Pleas and other Proceedings in Account. *Vide Accompt*, (E. 1, &c.)

In Account there are two Judgments, the firſt Judgment is *Quad* Defendant *computet*.

And upon ſuch Judgment a *Capias ad computandum* lies. 1 *Brownl.* 24. *Br. Jud.* 17.

If *Non eſt inventus* be returned thereon, an *Exigent* goes. *Ibid.*

But if he be taken on the *Capias*, he ſhall be bailed. 1 *Brownl.* 24. tho' *Ex Rigore* he ought to account in Priſon. *Vide Accompt*, (E. 18.)—*Bail*, (G. 2.)

As to the Writ, Declaration, Pleas, Judgment, *&c.* in Annuity, *Vide Annuity*, (D, E, F, G, H.)

As to the Writ, Count, Pleas and other Proceedings in Appeal, *Vide Appeal*, (G. 1, &c.)

As to the Plaint and other Proceedings in Aſſiſe, *Vide Aſſiſe*, (B. 8, &c.)

As to the Pleadings in Attaint, *Vide Attaint*, (C. 1, &c.)

As to Proceedings in *Audita Querela*, *Vide Audita Querela*, (E. 1, &c.)

(2 V) Pleading in Covenant.

(2 V. 1.) Proceſs.

A Writ of Covenant ſhall be ſued in *B. R.* or *C. B.*

Or Covenant may be ſued by Plaint in the County or Hundred. *F. N. B.* 145. *E. Reg.* 166.

Or, by *Juſticies*. *Reg.* 167.

If it be ſued by Plaint in the County, it may be removed into *C. B.* by *Recordare*. *F. N. B.* 145. *E.*

So, in the Hundred, it may be removed by *Accedas ad Curiam*. *F. N. B.* 145. *E.*

If it be ſued by *Juſticies*, it may be removed by *Pone*. *Reg.* 166, 167.

The Proceſs in Covenant in *C. B.* by the Common Law was Summons.

And

And now by the *St.* 23 *H.* 8. 14. Like Proceſs as in Debt; and therefore an Outlawry.

(2 V. 2.) Declaration.

The Declaration in Covenant ſhall be laid in the County where the Covenant was made. *F. N. B.* 146. *E. Vide Action*, (N. 6.)

The Declaration ought to be founded upon a Deed; for Covenant does not lie without Deed, except by the Cuſtom of *London*. *Vide Covenant*, (A. 1.)

And therefore, if the Declaration be, *quod cum per ſcript' Articul', &c. convenit*, without ſaying, *ſigillat'*, it is bad. *R. Cro. El.* 571. *Vide Poſt*, (2 W. 9—2 W. 14.)

So, if the Declaration be by an Aſſignee of a Reverſion, he muſt ſhew an Aſſignment by Deed. *R.* 3 *Lev.* 155. *Vide Poſt*, (2 W. 14.)

And tho' he ſhews an Attornment by the Leſſee, it is not ſupplied. *R.* 3 *Lev.* 155.

But *per Scriptum ſuum factum apud, &c.* is ſufficient; for this imports that it was ſealed and executed, otherwiſe it cannot be *Factum ſuum*. *Semb. Cro. El.* 571.

[*Contra, per Scriptum ſuum Factum apud* W. *conceſſit, &c.* is not ſufficient, for *Factum* here does not ſignify a Deed, but is an Adjective. Nor is this helped by *Oyer*, tho' it appears to be ſealed. *Per totam curiam. Moore* v. *Jones*, *M.* 2 *G.* 2. *Str.* 814. *Ld. Raym.* 1536.]

So, *per Indenturam cujus alteram Partem Sigillo* of the Defendant, omitting *ſigillat'*, will be aided by Plea or Verdict. *R.* 1 *Sal.* 141.

So, in Covenant by an Aſſignee, he need not ſhew the Deed of Aſſignment, where the Thing may be aſſigned without Deed, tho' the Covenant ought to be by Deed. *R. Cro. El.* 373, 436.

If a Man covenants with *A.* who was Agent for *B.* to pay, *&c. B.* ſhall not have Covenant. *Dub.* 2 *Mod. Ca.* 116.

If a Covenant be with Several, and it appears by the Deed, or by the Count, that their Intereſt is joint, All muſt join in the Declaration. *R. Skin.* 401. *Vide Obligation*, (F.)

So, when it appears that their Intereſt is joint, they muſt join; tho' the Defendant covenants with them *et eorum quolibet*. *R.* 5 *Co.* 19. *a.* 3 *Leo.* 161. *R.* 1 *Sand.* 155. *Sho.* 8.

Or covenants with them *conjunctim et diviſim*. *D. Mo.* 849.

Or Several covenant with Several *quilibet per ſe cum altero et alteris eorum reſpective*. *R.* 1 *Sand.* 155.

So, if the Intereſt and Covenant of the Covenantors be joint, the Action muſt be againſt all.

So on a Demiſe by *A.* and *B.* Covenant muſt be againſt both upon a Covenant in Law, if it aſſigns the Breach, that a Stranger was ſeiſed. *R.* 1 *Sal.* 137. *Carth.* 98.

Otherwiſe, if the Breach be of a Covenant in Law by *Tort* of One of the Leſſors only. *R. Carth.* 98.

[Where the Covenant is joint and ſeveral, in an Action againſt one only, the Breach may be aſſigned in the Neglect of both. *Lilly* v. *Hedges*, *T.* 9 *G.* *Str.* 553.]

But if the Intereſt of the Covenantees be ſeveral, and the Covenant be with them *et eorum quolibet*, every one may ſue ſeverally in reſpect of his ſeveral Intereſt. *R.* 5 *Co.* 19. *a.* *Mo.* 849. *R. Cont.* 2 *Leo.* 47.

So, if the Covenant be mutual between them, *et eorum quemlibet*. *R.* 2 *Lev.* 57.

So, if the Intereſt is ſeveral, each muſt ſue ſeverally; tho' it is ſaid, *that it was agreed between the Parties*, and there are ſeveral on the covenanting Part. *R.* 3 *Mod.* 263.

[If one named in the Indenture does not execute, he muſt be excluded by an Averment; or they may join in the Action. *Vernon* v. *Jeffreys*, *M.* 14 *G.* 2. *Str.* 1146.]

So

So, if ſeveral *conveniunt ſeparatim* to do ſuch a Thing, tho' they join in the Covenant, yet by the Word *ſeparatim* they may be ſued ſeverally, for it is the ſeveral Contract of each. *R.* 5 *Co.* 23. *a.* *Cro. El.* 408. (470) 546.

And if the Seal of one of the Covenantors is broken off, the Deed ſhall be void only as to him; for it is, as it were, the ſeveral Deed of each of them. 5 *Co.* 23. *a.* *Vide Fait*, (F. 2.)

So, if Several *conveniunt pro ſe et quolibet eorum.* *Per* 3 *J. Holt cont.* 1 *Sal.* 393.

So, if Several *conveniunt*, Covenant lies againſt One for a ſeveral Breach by him. 1 *Sal.* 138.

If *A.* and *B.* covenant to collect the Rents of *C.* and *D.* and that they and each of them will pay a Moiety to each of them, *A.* alone ſhall have Covenant againſt *C.* alone, and aſſign Breach, that he or *D.* did not pay him a Moiety. *R.* 2 *Mod. Ca.* 166.

A Declaration in Covenant muſt recite the Deed, in which the Covenant is contained. As, if it be in an Indenture of Feoffment.

Or in an Indenture of Bargain and Sale. *Lut.* 284.

Or in an Indenture of Covenant to ſtand ſeiſed. *Lut.* 287.

In an Indenture of Demiſe, *Lut.* 298, 308.

So he muſt ſhew the Original Deed, and not a Counterpart. *R. Noy* 53. *Vide Ante*, (O. 3.)

But it is ſufficient to ſay, *Quod cum teſtat' exiſt'* by ſuch an Indenture, without a direct Affirmation, that by ſuch Indenture *conven'*. *R. Cro. El.* 195. *R.* 2 *Cro.* 383. *R.* 2 *Cro.* 537. for this in Covenant is only Inducement. *R. Cro. Car.* 188. *Ad.* 2 *Leo.* 74. 2 *Jon.* 229. *Vide Ante*, (E. 3.)

Or *per Quoddam Script' per quod teſtat' exiſt'*. *R.* 1 *Sid.* 375.

So, it is ſufficient to recite the Deed according to the Conſtruction in Law; tho' different from the Words. *R.* 2 *Rol.* 249. *l.* 20.

So, it is ſufficient to recite ſo much of the Deed as contains the Covenant. *R.* 1 *Lev.* 88. *Per Rule* 1654. *Mills* 27.

Tho' it is a Condition or Proviſo, which goes in Defeaſance; for this will come from the other Side. *R.* 1 *Lev.* 88.

So, it is ſufficient to ſhew an Aſſignment to the Plaintiff, tho' he does not name himſelf Aſſignee. *R.* 2 *Cro.* 240.

So a Recital in the Words of the Deed does not prejudice, tho' they are uncertain, *&c.* as that he demiſed *Meſſuagium ſive Tenementum.* *R. Cro. Car.* 188.

So, in Covenant by the Huſband alone, *Teſtat' exiſt' quod* Huſband and Wife demiſed is well. *Sal.* 515.

So a Miſtake in the Recital of an immaterial Thing is no Prejudice.

[The Plaintiff needs not ſet out a Title, when he declares on his own Demiſe. *Aleberry* v. *Walby*, *M.* 6 *G.* *Str.* 229.]

So, it is ſufficient to ſay that he demiſed by Indenture, in which the Defendant covenanted, without ſhewing how he was intitled to make a Demiſe. *R. Cart.* 32.

So, if he ſays *in Placito Convention' frac'*, it is as well as *de Placito quod teneat Convention'*. *R.* 2 *Jon.* 229. *Hard.* 178.

So, if it be ſaid that the Plaintiff covenanted with the Defendant, where it ſhould have been, the Defendant with the Plaintiff, it will be aided after Verdict. *R.* 1 *Sid.* 49.

Or, *quod prædict' Thomas Chapman*, where the Surname is miſtaken; for *prædict' Thomas* is ſufficient. *R. Cro. El.* 697.

A Declaration in Covenant ought to aſſign a good Breach. *Vide Ante*, (C. 45. &c.)

The Breach ought to be co-extenſive with the Import and Effect of the Covenant. *Vide Ante*, (C. 47.)

If it aſſigns for Breach Diſturbance, *&c.* by a Stranger, it muſt ſhew, that it was lawful, and how. *Vide Ante* (C. 49.)

If the Covenant be in the Disjunctive, the Breach ought to be that he has not performed the one or the other. *Vide Ante*, (C. 45.)

The Breach muſt be aſſigned to have been before the Action brought. 1 *Sid.* 307. *Vide Action*, (E.)

In Covenant ſeveral Breaches may be aſſigned. 2 *Sand.* 380. *Winch. Ent.* 147. 1 *Sal.* 138.

So by the *St.* 8 & 9 *W.* 3. 11. In Debt on Bond or penal Sum for Performance of Covenants in an Indenture, &c. Plaintiff may aſſign as many Breaches as he pleaſes: But, before, it was double. *Dy.* 295. *b.*

And if he aſſigns two Breaches, he ought to ſay that he does it *ſecundum Formam Statuti. Per C. B. P.* 7 *Geo. Acc. per Cur' ibid. M.* 10 *Geo. Inter Walker and Prieſtly.* (*Reported in Comyns's Reports* 376.)

But, it is ſufficient, tho' it is not a direct Averment, *Et in Facto dicit*, &c. but only *Licet ipſe perform' Omnia ex Parte ſua*, and the Defendant entred, &c. *R.* 2 *Cro.* 383. *Vide Ante*, (C. 77.)

It is ſufficient, if the Breach be aſſigned in the Words of the Covenant. *Vide Ante*, (C. 45.)

Or in Words equivalent to the Senſe and Intent of the Covenant. *Vide Ante*, (C. 46.)

And, if the Plaintiff demands more than by the Covenant appears to be due, it is not bad. *R.* 2 *Lev.* 57.

So, if he demands leſs without ſhewing the Reſidue to be ſatisfied, it is not bad upon a general Demurrer. *R.* 2 *Lev.* 57. *Vide Ante*, (C. 84.)—*Poſt*, (2 W. 7.)

Otherwiſe, upon a ſpecial Demurrer. *Semb.* 2 *Lev.* 57.

If the Plaintiff does not conclude his Breach, *Et ſic infregit Convention'*, it is not bad. *R. upon a ſpecial Demurrer.* 2 *Jon.* 229.

Or ſays *infregit Conventionem*, where he aſſigns Breaches upon ſeveral Covenants. *R.* 2 *Mod.* 311.

So he ought not to repeat the Covenant in the Concluſion. *Per Rule* 1654. *Mills* 27.

In Debt upon Bond for Performance of Covenants the Breach ſhall be aſſigned in the Replication. *Vide Ante*, (F. 14.)

Where the Covenant is to be performed upon a Condition, or Conſideration, or other Thing previous, the Declaration muſt aver Performance. *Vide Ante*, (C. 51, &c.)

But in Covenant Nothing can be alledged or averred, which varies the Caſe, as it appears upon the Deed. *R.* 1 *Sal.* 197.

(2. V. 3.) Demurrer to the Declaration.

If the Declaration does not ſhew ſufficient Cauſe for the Plaintiff to maintain his Action, the Defendant may demur to the Declaration: As, if the Plaintiff is not intitled to Covenant againſt the Defendant. 2 *Sand.* 164.

[If on *Oyer* it appears, that two others beſides the Plaintiffs are named in the Deed, though they did not ſeal, Defendant may take Advantage of it by Demurrer. *Vernon* v. *Jeffereys*, *M.* 14 *G.* 2. *Str.* 1146.]

If the Covenant does not extend to the Breach aſſigned. *Co. Ent.* 115.

So, if ſeveral Breaches are aſſigned, he may demur to one, and plead to the others. 1 *Sand.* 108.

And Default of a good Breach is bad upon a general Demurrer. *Win. Ent.* 120.

So, if the Breach is not well aſſigned, he may demur ſpecially; for it will be aided upon a general Demurrer. *Vide Ante*, (C. 47, 48.)

If the Declaration recites the Indenture according to a Conſtruction which the Words do not import, the Defendant may demand *Oyer* of the Deed, and then demur. 2 *Sand.* 366.

So, if it recites it materially variant in any Reſpect, he may demur ſpecially for ſuch Cauſe. *Win. Ent.* 166.

If Debt be upon a Bond for Performance of Covenants, and the Defendant ſhews the Indenture, and pleads that there were no Covenants, the Plaintiff may demand *Oyer*, and then demur.

So, if the Defendant ſhews only Part of the Indenture, and pleads Performance, the Plaintiff may demand *Quod Indentura irrotuletur*, and then demur; for, by ſhewing Part only, he deprives the Plaintiff of the Opportunity of aſſigning a Breach in the other Part. *R.* 3 *Lev.* 50.

But, if ſeveral Breaches are aſſigned, ſome Good, and ſome Bad, and the Defendant demurs generally to the whole Declaration, the Plaintiff ſhall have Judgment for the Part which is good. 2 *Sand.* 380. *R.* 2 *Cro.* 557. *Vide Ante*, (Q. 3.)

(2 V. 4.) Plea.

(2 V. 4.) When it ſhall be after *Oyer.*

[Advantage cannot be taken of any Covenant omitted in Plaintiff's Declaration, on an Action of Covenant, without craving *Oyer*. *Ball* v. *Squarry*, *M.* 4 G. 2. *Fort.* 354.]

To an Action of Covenant the Defendant may plead after or before *Oyer* of the Deed, but to Debt upon a Bond for Performance of Covenants, the Defendant cannot plead without *Oyer* of the Bond. *Bro. Oyer* 16, 25. *Vide Ante*, (P. 1. 2.)

And after *Oyer* of the Bond and Condition, the Defendant ought to ſet out the Deed mentioned in the Condition under the Seal of the Plaintiff. 1 *Sid.* 50, 97. 1 *Vent.* 37. *R.* 1 *Sid.* 425.

And if he does not, it will be bad on a ſpecial Demurrer. 1 *Sid.* 50, 425. 1 *Sand.* 9.

And if the Defendant has not the Deed, the Court will, upon Motion, order the Deed or a Copy to be delivered to him by the Plaintiff. 1 *Sid.* 50. And this of Favour. 1 *Sand.* 9.

(2 V. 5.) What Pleas are bad. *Non infregit Conventionem.*

To Covenant the Defendant cannot plead *Non infregit Conventionem*; for it is too general, and two Negatives, *viz. et ſic non tenuit Conventionem, et non infregit, &c.* do not make good Iſſue. *R.* 1 *Lev.* 183. *Semb.* 1 *Leo.* 114. *R.* 3 *Lev.* 19.

But it ſhall be aided after Verdict. *R.* 1 *Lev.* 183. 1 *Sid.* 289.

(2 V. 6.) *Nil debet, &c.*

So, to Covenant the Defendant cannot plead *Nil debet*, tho' the Action be founded upon an Indenture of Demiſe, and Breach aſſigned for Non-payment of Rent. *R. upon general Demurrer*, 3 *Lev.* 170.

So to Debt on Bond for Performance of Covenants, he cannot plead, *No Covenants*; for then the Bond is ſingle. *R.* 1 *Lev.* 3. *R. Cro. El.* 756.

Nor can plead, that there is no ſuch Indenture; for he is eſtopped. *R.* 1 *Rol.* 408.

(2 V. 7.) What good *Non eſt Factum.*

But to Covenant, the Defendant may plead in Diſcharge or Performance.

As, he may plead to a Deed, *Non eſt Factum.*

Within Age. *R. Cro. Car.* 179.

If the Heir be ſued upon the Father's Covenant, he muſt plead *Riens per Diſcent*. *Lut.* 290. *Vide ante*, (2 E. 3.)

(2 V. 8.) Accord.

So he may plead Accord with Satisfaction made after the Breach. *Co. Ent.* 117. *a.* *Vide Accord*, (A. 1.)

But Accord is no Plea in Covenant for the Payment of Money. *Vide Accord*, (A. 2.)

[To covenant for Non-payment of Rent, it is a bad Plea that Defendant before Rent due, with Aſſent of Leſſor, aſſigned to *A.* who, with Aſſent of Leſſor, entered and paid Rent to Leſſor. *Joddrell* v. *Cowell*, *M.* 10 *G.* 2. *B. R. H.* 343.]

Nor in an Executory Covenant, if it is made before the Breach. *Vide Accord*, (A. 2.)

(2 V. 9) Arbitrament

So the Defendant may plead in Bar, an Arbitrament made after the Covenant broken.

How an Arbitrament ſhall be pleaded, *Vide Accord*, (D. 1.)

So the Defendant may plead Outlawry in Bar, where the Breach is for a Thing forfeited by Outlawry: As, for Non-payment of Rent. *Lut.* 1513. (2 V. 10.) Outlawry.

But where the Breach is for not Repairing, he cannot; for the Damages are uncertain. *R. Lut.* 1513.

So the Defendant may plead a Releaſe of all Actions, Covenants or Demands. *Vide Poſt*, (2 W. 30.) (2 V. 11.) Releaſe.

So a Releaſe of Covenants or Agreements in the Indenture, to a Bond for Performance of Covenants. 3 *Leo.* 69.

So, if a Covenant be with *B.* his Executors and Aſſigns, in an Action by an Aſſignee, the Defendant may plead a Releaſe by *B.* *R. Cro. Car.* 503. 2 *Rol.* 411. *l.* 35.

Tho' the Releaſe by *B.* be made after a Breach in the Time of the Aſſignee. *R. Cro. Car.* 503.

But a Releaſe by *B.* after an Action brought by the Aſſignee, is no Plea; for then an Intereſt in the Covenant is veſted in him. *R. Cro. Car.* 503. 2 *Rol.* 411. *l.* 30.

So a Releaſe of Actions to the Covenantor before Breach is no Plea. *D. Al.* 39.

So a Releaſe of all Covenants after Breach is no Diſcharge of the Bond for Performance of Covenants, for it was forfeited before. *R.* 3 *Leo.* 69. *Dy.* 57. *a.*

So, where a Covenant is joint and ſeveral, a Releaſe of the Action to one, ſhall not be a Bar as to the other. *Dub. Sal.* 574.

[A Diſcharge in Nature of a Releaſe, without Deed, in Satisfaction of all Demands, cannot be pleaded in Covenant; for Covenant by Deed muſt be diſcharged by Deed. *Rogers* v. *Payne*, *P.* 8 *G.* 3. 2 *Wilſ.* 376.]

So the Defendant may plead in Bar a Defeaſance of the Covenant. *Vide Poſt*, (2 W. 35.) (2 V. 12.) Defeaſance.

As, a ſubſequent Covenant, which diſcharges this. *Vide Defeaſance.*

Or, a Covenant that he will not ſue the Defendant upon a former Covenant. *P.* 4 *An. in C. B. inter Fitzgerald and Cragg.* (*Reported in Comyns's Rep.* 139.) *Adm. Sal.* 574. *Semb. cont. Sal.* 575.

And in all Caſes, where the Defeaſance is abſolute and perpetual, it amounts to a Releaſe, and ſhall be a good Bar. *R. Sho.* 46.

But on a Covenant by Charterparty, the Defendant ſhall not plead a Breach of Covenant on the other Part in Bar; for one may be leſs Damage than the other. *R.* 3 *Lev.* 41.

So, if ſeveral covenant, and the Covenantee makes a collateral Covenant with one that he ſhall not be ſued, this cannot be pleaded in Bar; for it does not amount to a Diſcharge of the prior Covenant; for it will not be to the Benefit of All, but only of One. *R. Tr.* 13 *W.* 3. *in B. R. inter Tracy and Kynaſton. Ent. M.* 11 *W.* 3. *Rot'* 1193. *Sal.* 575. (1 *Ld. Raym.* 688.) *R. P.* 4 *An. in C. B. inter Fitzgerald and Cragg.* (*Reported in Comyns's Rep.* 139.)

So a Covenant that he will not ſue for ſuch a Time. *R. Sal.* 573.

So, if a Covenant be to give Licence for ſeven Years for Payment, it is no Bar. *R. Sho.* 46.

So Sequeſtration of the Parſonage in Covenant for Rent upon a Leaſe by Indenture is no Bar. *R. Dal.* 44.

So, if *A.* covenants to pay 300*l. per Annum* to *B. quamdiu* he and his Wife live ſeparate, and by a ſubſequent Deed *B.* covenants to indemnify *A.* from the Payment of 300*l. quamdiu* he and his Wife cohabit, this is no Bar to the Action upon the firſt Deed; but *A.* muſt have his Remedy by Covenant upon the collateral Indenture, if he is ſued on the firſt. *R.* 2 *Vent.* 218.

The Defendant may plead Performance generally, or a ſpecial Performance. (2 V. 13.) Covenants performed.

In Covenant, or in Debt upon a Bond for Performance of Covenants, if all the Covenants are in the Affirmative, the Defendant may plead Covenants performed *Vide Poſt*, (2 W. 33.)

formed generally. *Co. Lit.* 303. *b. R. Cro. El.* 749. 1 *Lev.* 303. 2 *Sand.* 411. *Vide ante,* (E. 26.)

So, if ſome of the Covenants are Negative, but they are void in Law, the Defendant ſhall plead Performance generally; for the Court will take Notice that the Negatives are contrary to Law. *R. Mo.* 856.

So, tho' to Affirmative Covenants negative Words of the ſame Import are added. 1 *Sid.* 87.

So, in Covenant to diſcharge all Arrears of Rent, it is a good Plea, that he left Money in the Plaintiff's Hands to diſcharge it. *R.* 4 *Mod.* 249.

If ſeveral Breaches are aſſigned, he may plead to each. 1 *Sal.* 138.

But generally, where ſome of the Covenants are Negative, the Defendant muſt plead to them ſpecially. *Vide ante,* (E. 25.)

So, if the Covenant requires an Act to be done by a Stranger. *Ibid.*

Or an Act upon Record. *Ibid.*

So, if a Covenant be in the Disjunctive, the Defendant muſt ſhew what Part he has performed. *Ibid.*

So, where the Agreement is to do an Act upon Requeſt, and the Requeſt is alledged, it is no Plea to ſay, *quod paratus fuit facere.* *R.* 3 *Mod.* 295.

Yet, upon a general Demurrer it ſhall be aided; if the Defendant pleads generally, where there are any Negative Covenants. *Vide ante,* (E. 26.)

If, in Covenant, or Debt upon a Bond for Performance of Covenants, the Defendant pleads Performance to the Affirmative Matter alledged for Breach, or to be done by the Condition, it is not ſufficient without ſhewing how, and in what particular Manner he has performed it. *Vide ante,* (E. 25.)

As, if the Covenant be, *that he make appear to B.* it is not ſufficient to ſay, *that he made appear to B.* without ſaying how. *R.* 2 *Lev.* 125.

That he will pay a Moiety of a Sum to be received, it is not ſufficient to ſay, that he has paid a Moiety, without ſhewing how much he received. 1 *Sid.* 334.

That he will pay as long as Letters Patent ſtand in Force, it is not ſufficient to ſay, they are not in Force, without ſhewing how become void. *R. Sho.* 290.

So, it is not ſufficient to ſay, that he *paratus fuit,* or *obtulit* to perform, when he takes upon himſelf to perform at his Peril. *R.* 1 *Lev.* 191. *Vide ante,* (C. 61.—C. 75.)

But, if the Condition, *&c.* comprehends Multiplicity of Matter, to avoid Prolixity, Performance generally has been allowed, and the other Party ſhall be put to ſhew a particular Breach. *Vide ante,* (E. 26.)

As, if the Condition be to pay a Moiety of all Sums, which he ſhall from Time to Time receive. *R.* 1 *Sid.* 334.

So, if the Covenant be in the Negative, it is ſufficient to plead generally in the Negative: As, if the Condition or Covenant be, to indemnify, *&c.* the Defendant may plead generally, *Quod non fuit damnificatus. Vide ante,* (E. 25.)

So, if to Affirmative Words the Defendant pleads in the Negative *Non damnificatus, &c. R.* 2 *Co.* 4. 2 *Cro.* 363, 4. *Mar. pl.* 200.

So, if the Condition be, to free and indemnify from the Charges of a Suit. *R.* 5 *Mod.* 244.

But, where the Covenant or Condition is to indemnify from a certain and particular Thing, it is not ſufficient to ſay, *Non damnificatus* generally, but he muſt ſhew how he indemnified. *Semb.* 5 *Mod.* 244.

(2 V. 14.) Pleas to a Breach for Non-payment of Rent.

In Covenant, if the Breach be for Non-payment of Rent, the Defendant may plead *Riens arrear. R. cont.* 1 *Brownl.* 19. *Acc.* 2 *Brownl.* 273.

That the Plaintiff *Nil habuit in Tenementis.* 3 *Lev.* 193. *Vide Poſt,* (2 W. 48.)

[*Nil habet in Tenementis* cannot be pleaded, if the Demiſe is by Indenture. *Palmer* v. *Ekins, M.* 2 *G.* 2. *Str.* 817. *Ld. Raym.* 1550.]

[That another was ſeized in Fee before the Demiſe, amounts to *nil habet, &c. Ibid.*]

Solvit ad Diem. 2 *Brownl.* 273.

But,

But, if Breach be aſſigned upon a Covenant in a Leaſe for Non-payment of a Sum in *Groſs*, *Nil habet in Tenementis* is no Plea. *R.* 2 *Vent.* 99.

So, *Levy by Diſtreſs*, is no Plea in Covenant for Non-payment of Rent; for this admits the Rent not paid at the Day. *R.* 2 *Brownl.* 273. *Vide Poſt*, (2 W. 47.)

[That the Houſe was burnt down, and not rebuilt by the Leſſor, who was obliged to do it, is no Plea. *Monk* v. *Cooper*, *P.* 13 *G.* *Str.* 763. *Ld. Raym.* 1477.]

In Covenant for further Aſſurance, if the Breach be, that Counſel deviſed a Note for a Fine, which the Defendant was required to acknowledge and refuſed, the Defendant may plead *Non requiſivit*. *Lut.* 286. (2 V. 15.) For not making Aſſurance.

In Covenant, if the Breach be for Default of repairing, the Defendant may plead *quod reparavit*. (2 V. 16.) For not repairing.

That the Plaintiff was to deliver Timber, which upon Requeſt he did not deliver. *Lut.* 316.

Otherwiſe, if the Breach be aſſigned in a Thing which does not require Timber. *R. Lut.* 316.

If he pleads *quod reparavit* generally, and Iſſue thereon, after a Verdict for the Defendant, it ſhall be well. *R.* 2 *Mod.* 176.

But he cannot plead that he rebuilt. *R.* 2 *Leo.* 189.

If the Breach be, that the Tenements were not of ſuch yearly Value, the Defendant may plead that they were. *Lut.* 289.

If the Breach be, that a Stranger had Title, the Defendant ſhall plead, that he had not. *Lut.* 322.

But if the Breach be, that he did not leaſe, and the Defendant ſays, *non habuit unde dimittere potuit*, Replication, *quod habuit unde*, *&c.* is not good. *R.* 2 *Bul.* 41.

Yet, it ſhall be aided by a Verdict, *Quod habuit Terras unde dimittere potuit*. *Ibid.*

(2 V. 17.) Judgment.

If Covenant be on the Word *dimiſi*, *&c.* the Plaintiff ſhall not have Judgment for Damages, but for the Term. *R.* 2 *Leo.* 104.

If the Defendant has Judgment againſt him upon *Nil dicit*, Confeſſion, or Demurrer, a Writ of Inquiry ſhall be awarded to inquire of the Damages. 1 *Sand.* 47.

And by the *St.* 8 *&* 9 *W.* 3. 11. The Plaintiff may ſuggeſt on the Roll as many Breaches as he ſhall think fit; on which ſhall iſſue a Writ to ſummon a Jury before the Juſtices of *Niſi prius* for that County, to try each, and what Damage the Plaintiff ſuſtained by it, which Writ the ſaid Juſtices ſhall return to the Court from whence it iſſued.

In Covenant, if there be an Iſſue for Part, and a Demurrer for Part, the Jury, who try the Iſſue, ſhall alſo find conditional Damages upon the Demurrer. 1 *Sand.* 109.

If the Iſſue goes to the Whole, the Jury ſhall find Damages, and there ſhall be Judgment thereon.

[Where the preciſe Sum is not the Eſſence of the Agreement, the Quantum of Damages may be aſſeſſed by the Jury: Where the preciſe Sum is fixed by the Parties, the Jury are confined to it. *Lowe* v. *Peers*, *P.* 8 *G.* 3. 4 *B. M.* 2225.]

And by the *St.* 8 *&* 9 *W.* 3. 11. The Jury, beſides Damages and Coſts as uſual, ſhall aſſeſs Damages for ſuch of the ſaid Breaches as the Plaintiff ſhall prove broken, on which the like Judgment ſhall be entred as formerly.

But, if the Plaintiff aſſigns ſeveral Breaches, and the Defendant does not rejoin, the Plaintiff may ſign Judgment, if he pleaſes, without a Writ of Inquiry awarded returnable before the Juſtices of *Niſi prius*; for he has his Election

to proceed upon the Statute, or by the Common Law, and this, as well where the Judgment is for Want of a Rejoinder, as by *Nil dicit*, or Confeſſion, &c. *R. M.* 10 *Geo. in C. B. inter Walker and Prieſtly.* (*Reported in Comyns's Reports* 376.)

[If Breach is aſſigned for Non-payment of Rent, and for not Repairing, on Payment of what is due for Rent, Proceedings as to *that* ſhall ſtay. *Anon. T.* 17 *G.* 2. *Wilſ.* 75.]

(2 V. 18.) Execution.

After a Judgment in Covenant, there ſhall be the ſame Execution as in Debt.

But by the *St.* 8 & 9 *W.* 3. 11. If after Judgment, and before Execution, the Defendant pays into Court for the Plaintiff's Uſe the Damages aſſeſſed by the Jury and Coſts, a *Ceſſat Executio* ſhall be entred on Record.

So by the ſaid *St.* 8 & 9 *W.* 3. 11. If the Plaintiff be ſatisfied, by Execution executed, his Damages, Coſts, and the Charge of the Execution, the Defendant's Body, Land and Goods ſhall be forthwith diſcharged, and the Diſcharge ſhall be entred on Record.

But *by the ſame Statute*, ſuch Judgment ſhall remain as a collateral Security to the Plaintiff againſt any further Breach of Covenant, in which Caſe the Plaintiff, &c. may have a *Scire facias* on the ſame Judgment againſt the Defendant, his Heir, *Terre-tenant*, Executor, or Adminiſtrator, ſuggeſting other Breaches, &c. upon which ſhall be the like Proceedings *ut ſupra* to try Iſſues, diſcharge Execution, &c. *Et ſic toties quoties.*

So before, where there was a Judgment in Covenant upon a Breach of Covenant, a perpetual *Scire facias* might have been ſued upon a new Breach, without ſuing Covenant *de novo*. *R. Cro. El.* 3.

And Covenant could not be ſued afterwards upon a new Breach of the ſame Covenant. *Per Manw.* 3 *Leo.* 51.

(2 W) Pleading in Debt.

(2 W. 1.) Where it ſhall be brought.

DEBT lies, where a Man is indebted to another by Judgment, Specialty, Contract, &c.

If a Debt be under 40*s.* it ſhall be ſued for by Plaint in the County.

Or by *Juſticies* in the County. *Reg.* 139. *a.* *F. N. B.* 119. *I.*

The *Juſticies* requires the Sheriff *Quod juſtic'* the Defendant that he render to the Plaintiff what he owes to him, &c. *Reg.* 139. *a.*

And the Word *Juſticies* is repeated in the Writ to each Debtor. *Reg.* 139.

And, by the *Juſticies*, the County-Court may hold Plea in Debt above 40*s.* 2 *Inſt.* 312.

If it be ſued in the County, the Plaintiff may remove it by *Pone* into *C. B.* without any Cauſe, and the Defendant with Cauſe. *F. N. B.* 119. *K.*

Or by *Recordare*, if it be ſued in the Court of a City, Borough, &c. *F. N. B.* 119. *K.*

If the Debt be above 40*s.* it ought regularly to be ſued in *C. B.* by Original. *Reg.* 139. *b.*

And upon Pretence of Privilege by Bill in *B. R.* 4 *Inſt.* 71.

(2 W. 2.) What Proceſs.

(2 W. 2.) Summons.

Proceſs in Debt by the Common Law was only a Summons. 3 *Co.* 12. *a.*

By the *St.* 25 *Ed.* 3. 17. Like Proceſs was given in Debt as in Account, which by the *St. W.* 2. 17. was a *Capias*, and ſo to Outlawry. 3 *Co.* 12. 1 *Brownl.* 50.

The Original or Summons in Debt is by a *Præcipe quod reddat.* *Reg.* 139. *b.*

[Debt lies in *B. R.* or Original. *Semb. Per Hardwicke* C. J. *Bounds* v. *Allen*, *M.* 10 *G.* 2. *B. R. H.* 317.]

And it ſhall be in the *Debet and Detinet* for Money, but for Chattels, or by or againſt an Executor, it ſhall be in the *Detinet tantum*. *F. N. B.* 119. *M.* *Vide Ante*, (2 D. 1.)

The Original ought to name the Parties by their proper Names, and give an Addition to the Defendant. 1 *An.* 39. *Vide Abatement*, (E. 18, &c.—F. 17, &c.—F. 22, &c.)

It ought to be without Raſure, or falſe *Latin*, and agreeable to the Form of the Regiſter. *Vide Abatement*, (H. 1.)

And, if there be a Defect in the Writ, *Teſte*, or Return, it may be pleaded in Abatement, or aſſigned for Error. *Vide Abatement*, (H. 1, &c.)

The Original may be returnable two or three Terms after the *Teſte*. *Dy.* 175. *a.*

The Sheriff returns upon the Original, *Pledg' de proſ' et quod ſum'*. *Kit.* 257.

Or, *nihil habet per quod ſum' poteſt*, or if the Defendant be a Clerk, *no Lay Fee per quod, &c. Ibid.*

The Summons ought to be fifteen Days before the Day of the Return. *Ibid.*

(2. W. 3.) *Capias.*

If the Defendant does not appear upon the Return of the Original, a *Capias* iſſues. *Reg. Jud.* 1. *b. Off. Br.* 22.

If he does not appear, nor is taken upon the *Capias*, an *Alias Capias*, and afterwards a *Pluries Capias* iſſues. *Reg. Jud.* 1. *b. Off. Br.* 23.

And, if the Sheriff returns upon the *Capias*, that the Defendant *Latitat in al' Com'*, a *Teſtatum Capias* to the Sheriff of ſuch County. *Off. Br.* 23.

By the Common Law a *Capias* does not lie, except in Actions ſuppoſed to be done *Vi et Armis*. 3 *Co.* 12. *a.*

Or, for the King's Debt. 3 *Co.* 12. *b.*

By the *St. of Marl.* 23. and *W.* 2. 11. It was given in Account, and by the *St.* 25 *Ed.* 3. 17. in Debt. 3 *Co.* 12. *a.*

The *Capias* ought to be teſted at the Return of the Original, the *Alias* at the Return of the *Capias*, and the *Pluries* at the Return of the *Alias*. *Comp. Att.* 7.

It ought to be returnable in the next Term after the *Teſte*. *D. Cro. El.* (467.)

The *Capias* ought to be conformable to the Original, and the *Alias* and *Pluries* to the *Capias*.

And therefore, if the Original is *A. de B.* and *Capias* is *A. nuper de B.* it is Error. *R.* 2 *Cro.* 576.

If the Original be *Launcelot*, and the *Capias*, *Lancelot*. *Semb. Cro. El.* 50.

If the one be *A. B. Alderman*, the other *Armiger*. *R. Yel.* 120.

(2 W. 4.) *Exigent.*

If the Defendant is not taken, or does not appear upon the Return of the *Pluries Capias*, an *Exigi facias* iſſues. *Reg. Jud.* 2. *a.*

By the *St.* 31 *El.* 3. In all Perſonal Actions, a Writ of Proclamation ſhall be made out upon every *Exigent* of the ſame *Teſte* and Return, and delivered to the Sheriff of the County where the Defendant then dwells, who ſhall thereon make three Proclamations, the firſt at the County Court, the ſecond at Quarter-Seſſions, and the third a Month before the *Quinto exact'*, at the Church Door, where the Defendant dwells, *&c.* and all Outlawries otherwiſe had ſhall be void. So by the *St.* 6 *H.* 8. 4.

The *Exigent* ſhall be conformable to the Original and *Capias*.

And therefore, if it be a *Teſtatum Capias*, an *Exigent* does not lie thereon in the laſt County, without an original *Capias* there. *Dy.* 295. *b.*

The *Exigent* ſhall have ſuch Return, as that five County-Courts may intervene between the *Teſte* and Return. *Comp. Att.* 13.

And

And if there are not five County-Courts before the Return, an *Exigent de novo allocat' 4 Com'* iſſues. *Reg. Jud.* 21. *b.* 61. *b.* *Kit.* 264. *a.*

So, if another Perſon of the ſame Name with the Defendant appears upon the *Exigent*, the Plaintiff may have an *Exigent de Novo* againſt the Defendant. *Off. Br.* 80.

But the *Exigent allocat' Com'* muſt be executed at the next County after the fourth; for, if by any Accident the fifth County intervenes, it will be Error. *Pl. Com.* 371. *b.*

So Proclamation muſt appear to be made at the County-Court held *pro Com'*, for *in Com'* is not ſufficient. *R.* 1 *Vent.* 108. *R.* 3 *Mod.* 89.

[Return of Proclamation, "that they were made as by the Writ commanded," good. *Semb.* *Barnes* 322.]

If there are Several, it muſt be ſaid, *quod nec eorum aliquis comperuit.* *R.* 3 *Mod.* 90.

If the Defendant appears upon the *Exigent*, the Sheriff may return a *Reddidit ſe.* *Kit.* 264. *a.*

So, if one of the Defendants appears, he may return ſo for him, and proceed againſt the others. *Kit.* 264.

So, if one Defendant dies. *Kit.* 264. *b.*

If the Defendant appears upon the *Exigent*, he may have a *Superſedeas* to the Sheriff.

[*Superſedeas* to the Exigent ſhould be delivered to the Sheriff before Return. *Barnes* 319.]

[Whilſt the Writ remains in Sheriff's Hands, tho' after the Return, a *Superſedeas* may be allowed on Coſts. *Barnes* 323.]

[If Defendant becomes a Priſoner after the *Teſte*, and before the Return of Exigent on *Ca. ſa.* Proceedings ſhall be ſtaid. *Barnes* 321.]

If the Sheriff proceeds after *Superſedeas* to Outlawry, it will be Error. *Yel.* 57. *R. Mo.* 73.

So, it will be Error, if the Outlawry be pronounced on the ſame Day the *Exigent* bears *Teſte*. *R.* 2 *Cro.* 660.

If there be no Return to the *Exigent*. *R. Dal.* 68. 1 *And.* 36.

Or the Name of the Sheriff be not added to it. *Dub. Dal.* 68. *Leo.* 139. *Semb. Hob.* 70.

But it is no Error in an Outlawry, after Judgment, if there be no Proclamation in the County where the Defendant inhabits. *R.* 2 *Cro.* 577.

So an Outlawry ſhall not be reverſed for Default of Proclamation in the County where the Defendant dwelt, till Iſſue taken thereon and tried. *R.* 1 *And.* 36.

[After Conviction on an Information for a criminal Miſdemeanour Proclamations are not neceſſary. *Rex* v. *Wilkes.* *T.* 8 *G.* 3. 4 *B. M.* 2527.]

[If the Sheriff of *Middleſex* (which Officer is two Men) ſay at *my* County Court held in *Middleſex*, it muſt mean the County Court of *Middleſex*. *Ibid.*]

[When the Return of the firſt Execution ſpecifies where the Court was held, if the others ſay held at the ſame Place, it is certain. *Ibid.*]

[At *A.* near *B.* in the County of *Middleſex* ſignifies plainly at *A.* in the County, *&c. near B.* being only Part the Deſcription of *A.* *Ibid.*]

[But by Precedent (tho' without good Foundation at firſt) theſe *technical Words* are neceſſary; after the Words, *at my County Court*, muſt be added the Name of the County, as, *at my County Court of Middleſex*, and after the Word, *held*, muſt be added, *for the County of Middleſex*, at the Houſe, *&c.* The Want of theſe is Error, and for theſe Errors the Outlawries were reverſed. *Ibid.*]

(2 W. 5.) Outlawry upon it.

If the Defendant upon the *Exigent* being *Quinto exact'* makes Default, there ſhall be Judgment *quod utlaget'*. *Kit.* 263. *b.*

And the Outlawry ſhall be by Judgment of the Coroners. *R.* 2 *Rol.* 805. *l.* 35. *R.* 2 *Cro.* 521.

If there are ſeveral Defendants, the Judgment ſhall be *quod utlagentur.*

If Defendant be a Woman, it ſhall not ſay *quod utlaget'*, but *quod waiveat'*, otherwiſe it is Error. *R.* 2 *Cro.* 358. *Vide Utlagary*, (A.)

But

But a Return of the Coroners, that he was outlawed upon a *Certiorari* to them, does not conclude; for it does not belong to them. *Dy.* 223. *a.*

So, in every Caſe, where the Entry varies from the legal Form, it will be Error: As, if it does not appear that the County-Court was held *pro Com.* *R.* 3 *Mod.* 89. *R.* 2 *Rol.* 802. *l.* 30.

Or, if it be *in Huſtingis*, without ſaying, that it was *in Huſtingis de communibus Placitis* *Cro. El.* 50. 2 *Rol.* 803. *l.* 10.

So, if the *Quinto exact' &c.* be entred the Day of the *Teſte* of the *Exigent*. *R.* 2 *Cro.* 660.

Or, there are only fourteen Days between the two Counties upon the Return of the *Exigent*. *R.* 2 *Rol.* 802. *l.* 42.

If there are ſeveral Defendants, and the Entry is *non comparuerunt*, without ſaying, *nec eorum aliquis*. *R.* 2 *Cro.* 358. 2 *Rol.* 490. 2 *Rol.* 802. *l.* 25. *Cro. El.* 50. 3 *Mod.* 90.

If the Year is not mentioned to the *Quarto exact'*, tho' it be to the *Tertio* and *Quinto*, by which it may appear to be the ſame Year. *R.* 2 *Rol.* 803. *l.* 25.

If it be *ad Comitat' tent' primo M. Anno Regni Domini Noſtri Jacobi* omitting *Regis*. *R.* 2 *Rol.* 802. *l.* 45.

Or *Domini Regis*, omitting the King's Name. *R.* 2 *Rol.* 802. *l.* 50.

Or omitting, *Regni Angliæ*. *R.* 2 *Rol.* 803. *l.* 5.

If the Outlawry be *per Judicium Coronatorum*, without naming the Coroners, except in *London*. *R.* 2 *Rol.* 802. *l.* 37.

But in *London*, naming the Coroners is not uſual. *R.* 2 *Rol.* 802. *l.* 45.

So *Quinto exact' ad Feſt' S. Pauli.* 1653. without ſaying *A. D.* is no Error. *R. Hard.* 6.

So in *London* fourteen Days between two *Huſtings* will be well; for the *Huſtings* may be held every Week. 2 *Leo.* 14.

After Outlawry returned, the Plaintiff ſhall have a *Capias Utlagatum* againſt the *Defendant*. *Vide Utlagary*, (D. 5.) (2 W. 6.) *Capias Utlagatum.*

[*Capias*, *Alias*, & *Pluries*, may iſſue all together in order to an Outlawry. And no Affidavit for Bail is required, nor any Date to the Writs. *Barnes* 322.]

Or Special againſt him, his Goods, and Lands.

And thereon an Inquiſition ſhall be taken and returned.

Yet by the *St.* 4 & 5 *W.* & *M.* 18. A Defendant taken upon a *Capias Utlagatum* ſhall be diſcharged on his Attorny's ſigning an Appearance, or, if Special Bail required, on Bond, *&c.*

[If *Capias Utlagatum* recites a ſpecial Original, ſpecially expreſſing the Cauſe of Action, the Sheriff muſt take Special Bail, tho' the *Capias Utlagatum* is not marked for Bail. *Cracraft* v. *Gledowe*, *P.* 4 *G.* 3. 3 *B. M.* 1482.]

[Proceſs of Outlawry is not within 12 *G.* 1. *c.* 29. *Ibid.*]

Defendant cannot reverſe Outlawry, without giving ſuch Bail as the Law requires. *Ibid.*]

If the Defendant be taken upon a *Capias Utlagatum*, the Plaintiff cannot declare againſt him; for the Proceſs is determined. D. *Cro. El.* 706, 7.

But he may have a new Action of Debt againſt him. *D. Cro. El.* 707. 5 *Co.* 88. *a.*

Or may reverſe the Outlawry for Error. 1 *Bro. Ent.* 215, 216.

By the *St.* 31 *El.* 3. None ſhall be admitted to reverſe an Outlawry for Want of Proclamation unleſs he put in Bail to anſwer the Plaintiff on the ſame Cauſe of Action, and to anſwer the Condemnation alſo, if the Plaintiff begin Suit before the End of two Terms next.

[If the Caſe originally required Special Bail, and Defendant ſtands out to an Outlawry, he cannot come in and appear to the Outlawry, without putting in Special Bail, and the Filacer ſhall not iſſue a *Superſedeas* till then. *Campbell* v. *Daley*, *T.* 6 *G.* 3. 3 *B. M.* 1920.]

So, if the Reverſal be for other Defect, when the Debt and Damages amount to upwards of 10 *l.* *Com. Att.* 16.

So, if the Reverſal be of an Outlawry in Ejectment, *&c.* 2 *Rol.* 490.

If the Plaintiff proceeds to an Outlawry, when the Defendant was in Priſon upon the *Capias*, he ſhall reverſe it at his own Charge. 2 *Vent.* 46.

Or, if the Plaintiff knew that he was in Priſon in another Action at his Suit. *Sal.* 495.

Or, if the Defendant appears publickly, it ſhall be ſo in *B. R.* otherwiſe in *C. B. Sal.* 495.

After Outlawry reverſed, the Defendant ought to appear and accept a Declaration within two Terms next. *Vide Ante*, (C. 4.)

If the Outlawry was in *London. &c.* the Plaintiff may afterwards declare in another County. *R. Lev.* 245.

If the Plaintiff does not declare within two Terms after Notice of the Reverſal of the Outlawry, the Defendant ſhall have Coſts to be taxed by the Prothonotary. *Per Rule Trin.* 33 *Car.* 2. *Mills* 81.

After Outlawry reverſed, the Plaintiff may declare upon the firſt or upon a New Original, for by the Outlawry the firſt was determined. *Jon.* 442.

[If a Perſon outlawed, on Conviction for criminal Miſdemeanor, comes into Court, voluntarily, the Court will neither commit nor bail him. *Rex* v. *Wilkes*, *P.* 8 *G.* 3. 4 *B. M.* 2527.]

[Yet they may, on extraordinary Grounds either for or againſt him, but are not bound to do it. *Per Manſfield*, C. J. *cæteris non aſſentient. ut videtur. Ibid.*]

[A Perſon outlawed on a Conviction for a criminal Miſdemeanor, and in Cuſtody on *Capias Utlagatum* has no Right to demand to be admitted to Bail under 4 & 5 *W. & M. c.* 18. *Rex* v. *Wilkes. P.* 8 *G.* 3. 4 *B. M.* 2527.]

[Nor will the Court bail him by their diſcretionary Power without Conſent of Proſecutor, tho' a Writ of Error is allowed. *Ibid.*]

[For ſuch Cuſtody is *in Execution*; not for Security only, but in Part of Puniſhment, and will be conſidered in the final Judgment, and if the Outlawry is reverſed Defendant muſt continue in Cuſtody on the Conviction. *Ibid.*]

[Arreſt on *Cap. Utlagat.* is bad on *Sunday*. *Barnes* 319.]

[On Plaintiff's Death, and no Adminiſtration, Priſoner on *Cap. utlagat.* ſhall be diſcharged. *Barnes* 366.]

[Priſoner on *Capias Utlagatum* diſcharged by inſolvent Act, cannot be taken on a new *Cap. Utlagat. Barnes* 378.]

(2 W. 7.) Declaration in Debt.

(2 W. 7.) Muſt ſhew the Certainty of the Debt demanded.

A Declaration in Debt is founded upon a Specialty, or Judgment, or Contract.

In all Actions for Debt, the Declaration muſt ſhew the certain Sum demanded: And therefore, if the Contract is contingent, or depends upon divers Particulars, the Declaration ſhall demand a Sum certain. *Vide Ante*, (C. 21.)

If the Declaration be upon ſeveral Bonds or Contracts, what is due upon both ſhall be demanded in one intire Sum. *Yel.* 81. 3 *Leo.* 119.]

If it be for Arrears of an Annuity granted for Years, it muſt be for ſuch a Sum, without ſaying *de annuali Redditu. R. Yel.* 208. 1 *Bul.* 151.

Declaration, *quod pro diverſis Debitis et Mercimon' conceſſit ſolvere*, is not good. *R.* 2 *Rol.* 332.

If the Contract be for foreign Coin, the ſafeſt Way is to declare *Quod reddat* 20 *l.* certain, or whatever other Sum, and then ſhew the Contract for ſo much foreign Coin, which *atting' ad* 20 *l. Monet' Angl'. R.* 2 *Cro.* 88. *Yel.* 80. *Mo.* 775.

And this in Debt by Bill as well as by Original. *R.* 2 *Cro.* 88.

If a Man binds himſelf in a Bond to pay ſo much *Flemiſh*, *&c.* the Plaintiff may declare, *quod reddat* ſo much as it amounts to in *Engliſh* Coin. *R. Yel.* 81, 135. 2 *Cro.* 617. *Jon.* 69.

If a Man is bound to pay 67 *l.* at *H.* and Debt is brought for 56 *l.* the Value of the Coin there, without more, if the Defendant demands *Oyer* of the Bill, and then demurs, there ſhall be Judgment for the Defendant. *R.* 2 *Bul.* 154.

And

And where the Contract is for foreign Coin, the Plaintiff has his Election to demand such Coin, or as much as it amounts to in *Sterling*. *R.* 1 *Leo.* 41.

If there be a Sale of Goods for two Jewels, two Diamonds, *&c.* in certain, the Declaration may demand the Jewels, *&c.* 1 *And.* 118.

Yet if Debt be for so much *Monet' Flandr' ad Valor'* so much *Monet' Angl'*, it is well. *R. Cro. El.* 536. *Mo.* 704.

But then the Jury ought to inquire of the Value, or a Writ of Inquiry must issue before Judgment. *Cro. El.* 536. 2 *Cro.* 617.

So, if the Contract be for 20 *l.* to be paid in Goods, without saying what in certain, it must demand the 20 *l.* not the Goods. *R.* 1 *And.* 118.

If the Contract be for 100 Guineas, he may declare for so much as they are valued for. *Dub. Skin.* 573.

If Debt be for a certain Sum, and the particular Contracts, whereon the Plaintiff declares, amount to more, it is bad, for he has Judgment for more than he demands. *R. Yel.* 5. *Vide Post*, (2 W. 14.)—*Ante*, (C. 84.)

So, if he declares for so much due, and demands a less Sum without shewing that the Residue is discharged. *Vide Ante*, (C. 84.)

So, if he declares upon several Contracts, and shews Part satisfied, but does not say on which Contract, and he cannot recover upon all the Contracts, he shall recover for no Part. *R. Cro. El.* 583.

So, if the Debt be founded upon Record or Specialty, and he demands a less Sum than was due by the Specialty, without shewing the Residue satisfied: As, if 80 Shillings are demanded upon a Judgment in an inferior Court, where the Judgment was for 80 *s.* and four Pence. *R.* 3 *Mod.* 41.

[On a Certificate of the Commissioners of Army-debts for 105 *l.* 18 *s.* 7 *d.* Farthing, the Demand (which it was necessary by the Statute to make) had been made for 105 *l.* 18 *s.* 6 *d.* Farthing, and Plaintiff was nonsuited. *Palliser* v. *Ord*, *P.* 1724. *Bunb.* 166.]

But Debt for 50 *l.* and a Declaration upon a Bill to pay 50 *l. viz.* ten Pounds at five several Days, and ten Pounds *Nomine Pœnæ*, is well; for it is a several Bill as to the *Nomine Pœnæ*. *R. Cro. El.* 771.

So, in Debt upon several Bonds, if he shews Part satisfied, it is sufficient, tho' he does not say upon which Bond. *R.* 3 *Bul.* 244. 1 *Rol.* 423.

So it is sufficient, if he declares for a Debt of 50 *l.* tho' Part be satisfied before Action. 1 *Vent.* 135.

So in Debt upon a Statute, *&c.* If the Declaration be *quod cum, &c.* it is well. *R. Sho.* 337.

So a Declaration in Debt, generally, shall be in the *Debet et Detinet*.

(2 W. 8.) When in the *Debet et Detinet.*

Tho' it be against Husband and Wife for the Debt of the Wife *dum sola*. *R.* 3 *Leo.* 206.

Tho' Debt be for Guineas or foreign Coin of so much Value *English*. *R. Lut.* 488.

But where Debt is brought for Goods and Chattels it may be in the *Detinet* only.

As, in Debt *quod reddat Dolium Ferri*. *Yel.* 71.

Quod reddat so many *Quarteria Frumenti*. 2 *Cro.* 88. 4 *Leo.* 46. 11 *H.* 7. 5. *b.*

So, if it be for foreign Coin. *Mo.* 704. *Yel.* 81. *R. Lat.* 84. *R.* 2 *Cro.* 617. *R. Lat.* 5. *Jon.* 69.

Or for Guineas in *Specie*. 4 *Mod.* 410. *Lut.* 488.

So in Debt by or against an Executor. *Vide Ante*, (2 D. 1.—2 D. 2.)

But upon an Original in Debt, the Plaintiff cannot declare in Annuity. *R. Yel.* 208.

And therefore, if the Declaration is *Quod reddat* 50 *l. de annuali Reddit'*, and shews the Grant of an Annuity, it is bad. *Yel.* 208.

So a Declaration in *B. R. de Placito Debiti quod reddat ei* 20 *l.* without saying, *quas ei debet et iujuste detinet*, is bad. *R. Mod. Ca.* 306.

If

(2 W. 9) Declaration upon a Bond, &c.

If the Plaintiff declares upon a Bond, or other Specialty, he muſt ſhew the Certainty of the Bond. &c.

And therefore, if he ſays *per Scriptum conceſſit*, without ſaying *per Scriptum ſuum Obligatorium*, it is bad. *Semb. Cro. Car.* 209.

Or *per Scriptum Manu ſuâ ſignat.* *Semb.* 3 *Lev.* 234.

But *per Scriptum ſuum Obligatorium* is ſufficient, without ſaying *Sigillo ſigillat'*, for *Scriptum Obligatorium* implies it. *R. Cro. El.* 737. *R.* 2 *Cro.* 420.

And if he omits *per Scriptum Obligatorium*, after Plea upon *Oyer quod ſolvit, &c.* it ſhall be aided. *R. Cro. Car.* 209.

So, after Plea of Privilege, and a Demurrer thereto. *Lut.* 1667.

So *per Scriptum Obligatorium* is ſufficient, without Mention of the Date, or Seal, or Delivery. *R. Mod. Ca.* 306.

So *per Scriptum Obligatorium cujus Dat' eſt eiſdem Die et Anno*, tho' it has another or void Date, for *cujus Dat'* ſhall be conſtrued of the Delivery, otherwiſe if it was *gerentem* ſuch a Date; for then the true Date ſhall be ſet out. *R. Sal.* 463.

If the Bond upon *Oyer* appears to be, *I. A. ſtand bound in* 16 *Pounds, and is to be paid to B.'s Executors*, it is good, without ſaying to whom bound. *R.* 3 *Lev.* 21.

If the whole Subſtance of the Bond, &c. be in the Declaration, it is not neceſſary to mention Words, underwritten, or indorſed. *R.* 2 *Brownl.* 98.

The Plaintiff may declare upon ſeveral Bonds in the ſame Declaration. *Vide Action*, (G.)

So he may declare upon a Bill for Payment of Money on a Day with a *Nomine Pœnæ* for Non-payment, and afterwards declare for the *Nomine Pœnæ*. *R. Cro. El.* 771.

So he may declare upon a Penal Bill, tho' it be not formally expreſſed. *R.* 2 *Vent.* 106.

If the Declaration is inſufficient, or upon *Oyer* appears not ſufficient, the Defendant may demur. *Vide Ante*, (Q. 3.)

(2 W. 10.) Upon a Statute, Recognizance, &c. *When it lies Vide Dett*, (A. 3)

If the Plaintiff declares upon a Statute, Recognizance, &c. he muſt ſhew the Certainty of the Statute, or Recognizance. *Aſh. Ent.* 223. *Raſt.* 189. *a.*

And therefore, if he declares *Quod A. coram Ch. J. conceſſit ſe teneri, &c. Et ſi defecerit, conceſſit per idem Scriptum quod curreret ſuper ſe Pœna in Stat' Stap'*, without ſaying *per Scriptum ſuum Obligatorium* or *ſecundum Formam Statuti*, it is bad. *R. per* 3 *J. Cro. Car.* 363.

So, if the Declaration does not ſhew the Statute to have ſuch Seals as the Act directs, it will be bad. *Mo.* 811.

But, if the Jury find that *A. recogn' ſe debere, &c.* without ſaying, *per Scriptum Obligatorum*, or *ſecundum Formam Statuti*, it is ſufficient. *R.* 4 *Co.* 65. *b.*

So, if the Statute be recited, as Inducement to the Action, it is ſufficient, tho' it it is not ſaid, that it was *ſub Sigillo*. *R. Mo* 811.

[On a Recognizance againſt Bail, muſt ſhew at whoſe Suit Defendant became Bail, and for what Sum the Suit was brought. *Park* v. *Yerbury*, *M.* 24 *G.* 2. 1 *Wilſ.* 284.]

(2. W. 11.) Upon a Contract. *When it lies Vide Dett*, (A. 8.)

So, if the Plaintiff declares upon a Contract, he ought to ſhew the certain Contract, where the Contract is expreſs: As, upon a *Mutuatus*, or Account. *Bro. V. M.* 162.

Upon a Sale or other Agreement Executory. 1 *Bro. Ent.* 160, 165.

For a Salary upon a Retainer. 1 *Bro. Ent.* 176. *Bro. V. M.* 166, 7.

For Fees. 1 *Bro. Ent.* 172. *Vide Attorny*, (B. 18.)

Upon a Submiſſion to an Award without Specialty. 2 *Sand.* 127. *Vide Arbitrament*, (l. 1, 2, 3.)

So, if the Contract is only implied by the Law, the Plaintiff by his Declaration ought to ſhew the Foundation of the Contract.

As, in Debt for an Eſcape, the Plaintiff ſhall ſhew the Judgment, Execution, and Commitment thereon. 2 *Sand.* 98. 2 *Bro. Ent.* 59. 3 *Lev.* 390. *Vide Action on the Caſe for Negligence,* (A. 2.) *Vide Ante,* (2 P. 1.)

For a Penalty of a By-Law, muſt ſhew a Power to make, By-Law made, and Breach. 2 *Vent.* 243. 1 *Bro. Ent.* 170.

For a Fine of a Copyhold, a Cuſtom for the Fine, and Admiſſion to Copyhold. *Clift* 244. *Lut.* 597. *Vide Copyhold,* (H. 6.)

For a Fine, or Amerciament, in a Court Leet, the Plaintiff muſt ſhew a Power to hold the Leet, the Offence, and the Fine or Amerciament for it. *Lev. Ent.* 62. 1 *Bro. Ent.* 152, 154, 168.

(2 W. 12.) Upon a Judgment.

If the Plaintiff declares upon a Judgment, he muſt ſhew the Certainty of the Judgment, *Vide Ante,* (E. 18.)

As, if the Declaration be in *C. B.* upon a Judgment in *B. R.* he muſt ſhew the Term and Parties, and Thing recovered. 2 *Mod. Int.* 224, 5. *Lut.* 600.

So, if it be upon a Judgment in the ſame Court. 2 *Mod. Int.* 223, 4.

And if it be upon a Judgment in *C. B.* he muſt alſo ſhew before what Judges.

So, if it be upon a Judgment in an inferior Court. 2 *Mod. Int.* 228. *Carth.* 86.

So the Plaintiff muſt aver that the Judgment ſtands in full Force. *Semb. Lut.* 600.

But in Debt upon a Judgment, the Plaintiff need not ſhew All the Proceedings at large. *Semb. Cro. El.* 817.

Tho' it be upon a Judgment in an inferior Court. 2 *Mod. Int.* 229. *R. Sho.* 71. *Carth.* 86. *Vide Ante,* (E. 18.)

[On a Judgment of Nonſuit in an inferior Court, it is not neceſſary to ſet forth that the Plaint in the Court below was levied for a Cauſe of Action ariſing within its Juriſdiction; nor is it neceſſary to ſet out the Plaint and ſubſequent Proceedings; it is enough if the Nonſuit is laid to be given and recorded at a Court held within it's Juriſdiction. *Murray* v. *Wilſon, H.* 25 *G.* 2. 1 *Wilſ.* 316.]

It is not neceſſary to ſhew (except in the Caſe of an Executor or Adminiſtrator) more than the Judgment. *Per Rule* 1654. *Mills* 27.

Nor in a Declaration againſt an Executor or Adminiſtrator upon a Judgment, more than the Declaration and the Judgment upon it. *Ibid.*

It is not neceſſary to ſay *prout patet per Recordum. Sal.* 565.

So, if the Plaintiff does not ſhew, who were the Judges of the Court, it will be aided after Verdict. *R. Carth.* 86.

(2 W. 13.) Pleas. *Nul tiel Record, Nil debet, &c. Vide Poſt,* (2 W. 36, &c.)

To Debt upon Judgment in any Court of Record, if there was no ſuch Recovery, or the Record is miſtaken, the Defendant may plead *Nul tiel Record.* 3 *Mod.* 41.

Tho' the Judgment was in the ſame, or in an inferior Court. *Bro. V. M.* 244. *Clift* 148.

So, in every Caſe where the Record is denied, the Defendant ſhall ſay *Nul tiel Record.*

And *Nul tiel Record,* without more, is a complete Iſſue if the Record is in the ſame Court. *Mod. Ca.* 40.

But where the Record itſelf is ſhewn to the Court in Pleading, the Defendant cannot ſay *Nul tiel Record*; for, by the *Profert in Curia,* it appears to the Court that there is ſuch a Record: As, if Letters Patent are pleaded, the Defendant may ſay *Non conceſſit,* but not *Nul tiel Record. Co. Lit.* 260. *a. Hard.* 158.

If the Defendant pleads *Nul tiel Record,* he ſhall conclude to the Action. *Clift* 148.

And to this Plea the Plaintiff ought to reply, that there is ſuch a Record. *Lut.* 945.

And the Replication ſhall conclude, *prout patet per Recordum. Lut.* 945. *Vide Ante,* (E. 29.)

If the Record is in the ſame Court, the Replication ſhall pray, *Quod videat' per Cur'*, and a Day ſhall be given for the Inſpection. *Lut.* 945. *R. Sal.* 566. *Carth.* 517.

Or the Plaintiff may demand *Oyer*. *Per Holt*, *Carth.* 517.

If it be in another Court, Day is given to produce it, as in *B. R.* *Bro. R.* 107. *Sal.* 566.

[On *Nul tiel Record* pleaded, *B. R.* will not make an *Order* for the proper Officer of *C. B.* to attend with Record, there muſt be a *Certiorari*. *Hewſon* v. *Brown*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1034.]

In *C. B.* *Cl. Aſſ.* 79.

If it be in a County *Palatine*, there ſhall be a Writ to the *Chamberlain* to certify, *&c.* *Clift* 148.

So, if it be in an inferior Court, there ſhall be a Writ to the proper Officer to certify, *&c.* *Bro. V. M.* 244.

If the Officer refuſes to certify, there ſhall be a Rule to do it *upon Pain*, and if he does not, an Attachment. *Pal.* 562.

At the Day given for the Record, there ſhall be Judgment for, or againſt, the Defendant, if he ſhews, or fails of the Record. *Town. Jud.* 72, 73.

But an immaterial Variance is no Failure. 3 *Leo.* 243. *Hob.* 209. *Vide Record*, (D.)

To Debt upon a Judgment in a Court not of Record, the Defendant may wage his Law, or plead *Nil debet*. *Vide Poſt*, (2 W. 17. — 2 W. 44. — 2 W. 45.)

So by the *St.* 4 & 5 *Ann.* 16. To Debt upon any Judgment, he may plead Payment in Bar of the Action.

[If there is Judgment for 388*l.* 0*s.* 1*d.* and Debt is brought on it for 388*l.* omitting the Penny, it is Variance, and cannot be cured by a *Remittit* of the Penny, for that muſt be before Judgment. *Coy* v. *Hymas*, *M.* 16 *G.* 2. *Str.* 1171.]

(2 W. 14.) Upon a Demiſe.

If the Plaintiff declares upon a Demiſe, he muſt ſhew the Certainty of the Lands demiſed.

And therefore, if he alledges a Demiſe made to *B.* but does not ſay where the Land lies, it is bad. *R.* 2 *Cro.* 682.

If the Plaintiff be an Aſſignee, he muſt ſhew a good Aſſignment: As, an Aſſignment by Deed. *Vide Ante*, (2 V. 2.)

And *per Scriptum*, without ſaying *ſigillat'* or *fact'*, is not ſufficient. 1 *Leo.* 310. *Vide Ante*, (2 W. 9.)

But Default of Attornment ſhall be aided after Verdict. *R. Ray.* 487.

So, if he ſays, that he is yet ſeiſed of the Reverſion, where the Term is determined. *R.* 2 *Cro.* 118.

So it is ſufficient, to alledge the Lands demiſed, as general and certain as they are in the Leaſe. *R.* 2 *Cro.* 124.

Tho' no *Vill* appears, where the Land lies, but only the County. 2 *Cro.* 125.

So it is ſufficient, to ſay that the Plaintiff demiſed, without ſhewing what Eſtate he had. *Sal.* 562.

So the Plaintiff muſt ſhew that the Defendant entred and was poſſeſſed by Virtue of the Demiſe. *Semb. Cro. El.* 262.

And this is neceſſary, where the Debt is for Rent upon a Leaſe at Will; for the Defendant is charged in reſpect of his Occupation. *R.* 1 *Sal.* 209.

If he ſhews that he was poſſeſſed *a Feſto Michaelis uſque ad Feſtum M.* when he demands Rent for one Year, it is bad; for it wants one Day of a Year. *Per Yel.* 74.

But *Virtute cujus intravit* is ſufficient, without ſhewing the Time of the Entry. *R. Lat.* 196.

And if the Leaſe commenced at a future Day, it ſhall be intended that he entred after the Day. *R.* 2 *Cro.* 549.

So upon a Leaſe for Years no Entry or Occupation need be alledged. 1 *Sal.* 209.

So, if a Leaſe begins from *Michaelmas*, and the Entry is 29th *September*, which is the Day before the Commencement, it will be well after *Nil debet*, and a Verdict for the Plaintiff. *R. Cro. El.* 169.

If the Declaration alledges a Demiſe *per Nomen, &c.* it ought to ſay that it was by Writing. *R.* 3 *Leo.* 9.

So the Plaintiff muſt ſhew expreſſly what Rent is reſerved; for *ſecundum Ratum* 20*l.* is not ſufficient. *R.* 1 *Sal.* 262.

So the Plaintiff muſt ſhew when the Rent was in Arrear. *Semb.* 2 *Cro.* 668.

But it is ſufficient, if the Plaintiff ſays the Rent was in Arrear at ſuch a Day, without ſaying that it then became due; for it ſhall be intended upon a general Demurrer. *R.* 1 *Sal.* 139.

And, if it be reſerved at two Feaſts, it is not ſufficient to ſay that it was in Arrear for a Year, without ſhewing at what Feaſt the Year expired. *R.* 3 *Mod.* 70. *Semb. Sho.* 9. *R. Cro. El.* 702.

Yet, if the Declaration ſhews that he had Poſſeſſion only one Year, it will be aided. *R.* 3 *Mod.* 70.

If it be reſerved at two Feaſts, or 10 Days after, it is not ſufficient to ſay that it was in Arrear for 10 Days, but he muſt ſay after 10 Days. *R. Cro. El.* 262.

If the Grantee of a Reverſion be Plaintiff, he need not alledge Notice or Attornment in the Declaration; for if he has paid, it will be a good Plea, if not, the Action is a Demand. *R.* 2 *Cro.* 193.

But the Rent muſt be computed according to the Day mentioned in the *Reddendum*, not according to the *Habendum:* As if a Demiſe be to commence from the 24th *December*, rendring Rent at *Michaelmas*, *St. Thomas, &c.* the Declaration muſt ſay that the Rent was due 21ſt *December*, *viz. St. Thomas*, not the 24th *of December*. *R.* 1 *Sal.* 141.

Yet *Reddendum* quarterly ſhall be computed according to the *Habendum*. 1 *Sal.* 141.

But if Debt be for a Sum more or leſs than the Rent in Demand, it is bad, except where it ſhews the Reſidue diſcharged. *Vide Ante*, (C. 84.)—(2 W. 7.)

As, if Debt be for 100*l.* and the Plaintiff declares upon a Leaſe, rendring 74*l.* and demands for a Year and a half, it is bad, if he does not ſhew that the 11*l.* above the 100*l.* is ſatisfied. *Semb.* 2 *Lev.* 4.

So, if Debt be for 15*s.* and he declares upon a Leaſe rendring 30*s.* and demands Rent for a Year, it is bad, if he does not ſay how the 15*s.* are diſcharged. *R. Cro. Car.* 137.

Yet in Debt for ſo much Rent, upon *Nil debet*, if it appears that the Rent ought to be apportioned for Part, the Plaintiff ſhall recover for the Reſidue. *Per Poph.* 3 *Co.* 24. *a. Acc.* 1 *Sid.* 6. 2 *Inſt.* 504.

So in Debt for a Quarter's Rent due at the End of the Term, it is ſufficient without ſhewing the Reſidue ſatisfied. *R.* 2 *Vent.* 129.

So, if by his own ſhewing the Plaintiff demands more than is due, after a Verdict upon *Nil debet* he may remit the Surplus. 1 *Vent.* 49.

(2 W. 15.) Judgment by Confeſſion, &c.

After a Declaration in Debt the Defendant may demur.

Or Demand *Oyer* of the Deed, on which he may demur, if upon *Oyer* no Cauſe of Action appears.

Or, to avoid more Trouble, the Defendant may give Judgment by his Confeſſion.

Or by *Nil dicit*. *Bro. Vad. M.* 216.

Or, to avoid Damages againſt him in Writ of Deceit, the Attorney may plead *Non ſum informatus*. *F. N. B.* 98 *I.*

But the Prothonotary ſhall not ſign Judgment by Confeſſion, *Nil dicit*, or *Non ſum informatus*, if it be not brought to him, after *Eaſter*, before the firſt Day of *Trinity* Term, or within 20 Days after the End of every other Term, except where the Warrant of Attorney is dated after the Term, and then before the Eſſoin-Day of the next Term. *Per Rule Tr.* 29 *Car.* 2. *Mills* 75.

(2 W. 16.) Pleas in Debt.

(2 W. 16.) Upon a Bond. What are good or not.

To Debt what Pleas the Defendant may plead in Abatement, *Vide Abatement.*

In Bar to Debt upon a Bond, the Defendant shall plead in Avoidance or Discharge of the Action.

(2 W. 17.) *Nil debet.*

As the Defendant may plead the General Issue *Nil debet* to Debt upon Contract, not upon Bond.

And this Plea is good in all Cases, where Nothing is due at the Time of the Action.

So *Nil debet* is a Plea in Debt for an Escape; for the Commitment is only Inducement. *Sal.* 565.

In Debt against an Executor or Administrator upon a *Devastavit* after Judgment against him, tho' mixt with Record. 1 *Sand.* 219. *R. Cart.* 2.

In Debt upon a Specialty to pay so much as *A.* owes; for it is no Sum certain, but must be ascertained by Averment. *R. Skin.* 17.

In Debt for the Arrears of a Rent-Charge devised for Life; for the Will is no Specialty. *Hard.* 332.

In Debt upon a Tally. *Hard.* 332, 333.

Tho' the Debt is barred by the Statute of Limitations; for he need not plead *Nil debet infra sex Annos*, but *Nil debet* generally. *Per Holt*, C. J. (*Vide* 1 *Ld. Raym.* 153.)

Or a Release be given; for then he owes Nothing. 1 *Sal.* 394.

And this Plea ought to conclude to the Country. *R.* 1 *Sand.* 283.

And the Plaintiff ought to join in Issue without Replication. *Co. Lit.* 126. *a.*

But where the Defendant has Matter for his Excuse or Discharge, he cannot plead *Nil debet.*

So it is no Plea to a Penalty in an Indenture to perform Covenants. *R.* 2 *Mod. Ca.* 106, 323, 382.

[Where Matter of Fact is the Foundation of the Action, and a Specialty only Inducement to it, as in Debt for Rent on an Indenture. there *Nil debet* is a good Plea; but where the Specialty is the Foundation, and the Fact is but Inducement, as in Debt for Non-performance of a Covenant to accept and pay for Stock, there *Nil debet* is no Plea. *Warren* v. *Consett*, *T.* 13 *G. Ld. Raym.* 1500. *Str.* 778.]

So *Nil debet* is no Plea to a Debt by Bond, single Bill, or other Specialty, without an Acquittance. *R.* 5 *Co.* 43. *a. Cro. El.* 455, 157. *Mo.* 692. *R.* 9 *Ed.* 4. 53. *a.*

[*Nil debet* is no Plea to a Bail-Bond. *Mills* v. *Bond*, *M.* 7 *G. Fort.* 363. *Maybew* v. *Maybew*, *P.* 4 *G. Fort.* 367.]

Nor to an Annuity granted by Deed. *Hard.* 333.

Nor Payment without an Acquittance, and, if found for the Defendant, he shall not have Judgment. 2 *Cro.* 377. If found for the Plaintiff it shall be aided by the *St.* 32 *H.* 8. *Vide Amendment*, (K. 1.)

[If *Nil debet* is pleaded in a *Qui tam* Action, Defendant cannot give in Evidence, a Record of Recovery against him for the same Forfeiture by another Person. *Bredon* v. *Harman*, *P.* 12 *G. Str.* 701.]

[A Set-off may be pleaded to Debt on a Bond, conditioned for the Payment of an Annuity or growing Sum. *Collins* v. *Collins*, *T.* 32 & 33 *G.* 2. 2 *B. M.* 820.]

[The whole *Penalty* of a Bond cannot be set off. (And *Q.* Whether under a Penalty of a Bond for Performance of Articles, which sounds only in Damages, the Sum really due for Damage sustained can be set off?) *Nedriffe* v. *Hogan*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1024.]

[*Nil debet* on Bond may be good after Verdict, tho' bad on general Demurrer. *Anon. M.* 27 *G.* 2. 2 *Wilf.* 10.]

(2 W. 18.) *Non est Factum.*

So to Debt upon Bond, &c. the Defendant may say *Non est Factum. Cl. Ass.* 72.

And this Plea is good in all Cases where the Bond or Specialty was not executed.

Or,

Or, if it was executed, but was void *ab Initio:* As, for Default of Capacity; if the Obligor was a Monk, *Feme Covert*, &c. he may plead a ſpecial *Non eſt Factum.*

And it ought to conclude to the Country. *R.* 1 *Sal.* 274.

[On *Non eſt Factum* pleaded to Debt upon Articles, Defendant may give Lunacy in Evidence, and Plaintiff will be nonſuited. *Yates* v. *Boen*, *M.* 12 *G.* 2. *Str.* 1104.]

But, if the Plaintiff pleads over to the Special Matter, it will be well. 1 *Sal.* 274.

[If a Bond is void *ab Initio*, the Facts, which make it ſo, may by Law be averred and ſpecially pleaded; *e. g.* that the Bond was given to indemnify againſt a Note given to ſuppreſs Evidence on an Indictment for Perjury. *Collins* v. *Blantern*, *P.* 7 *G.* 3. 2 *Wilſ.* 341, 347.]

[Such Plea ſhall conclude, that the ſuppoſed Bond *is void in Law, et hoc*, &c. and therefore prays Judgment, and this may be pleaded with *Non eſt Factum. Ibid.*]

A Special *Non eſt Factum* puts the Proof upon the Defendant, which, upon *Non eſt Factum* generally, will be upon the Plaintiff. *Mod. Ca.* 218.

So, if it was executed, but became abſolutely void before the Time of the Action: As, if it be eraſed, altered, or cancelled. *R.* 5 *Co.* 119. *b.* *Dub. Dy.* 112. *a.* 1 *Bro. Ent.* 198, 199. *Cont. Sav.* 71.

So, if two are bound, and the Seal of one is broken off, for this avoids the whole Deed; tho' they are bound jointly and ſeverally. *Dy.* 59. *a. in Marg.* But it ſhall conclude *Actio non*, &c. *Dal.* 33. *Not his Deed. Dal.* 105.

So, if it was executed to the Uſe of One, who refuſed it, or if her Huſband refuſed. 5 *Co.* 119. *b.* *Dy.* 167. *b.*

Or was delivered as an *Eſcrow*, to be his Deed upon Conditions, which are not performed. 2 *Rol.* 683. *l.* 5. 2 *Bro. Ent.* 82. *Ray.* 197. *Mod. Ca.* 217. and ſhall conclude *Actio non*, &c. *Dal.* 33. *Dy.* 167. *b.*

But it is no Plea where the Deed is only voidable: As, for Infancy, *Dures* or *per Minas.* *R.* 5 *Co.* 119. *a.*

So, if it is void by Act of Parliament: As, by the Statute of Uſury, &c. *R.* 5 *Co.* 119. *a.*

Or becomes void after Action brought, by Accident: As, if the Seal is deſtroyed by Rats, or other Accident, after Plea. *R. Dy.* 59. *R. Dal.* 33.

So it is no Plea, where the Deed is inrolled upon Record. 1 *Rol.* 862. *l.* 12.

Nor to a Recogniſance or Statute. *Hard.* 367.

So a Stranger to the Deed cannot plead a ſpecial *Non eſt Factum*; but ſhall ſay, *Nothing paſſed by the Deed.* 1 *Rol.* 188.

If the Plea ſays, *quod Factum prædictum* was altered, *et ſic non eſt Factum*, it will be repugnant, and bad. *R. Cro. El.* 800.

So, it is no Plea, where it was a joint Bond, and the Plaintiff declares upon a Bond by one alone. *R.* 5 *Co.* 119. *a.* *Sav.* 92.

Where the Bond was delivered to the Party himſelf upon a Condition not performed. *R.* 9 *Co.* 137. *a.*

Or, if the Delivery to a Stranger be not as an *Eſcrow*. *Dy.* 167. *b.* *Co. Ent.* 145. *b.*

If an Indenture be executed by one Party only, and the other Party does not execute. *R. Cro. El.* 212.

If the Delivery, after Conditions performed, is to be *ut Scriptum ſuum*, not *ut Factum*. *Per* 2 *J. Morton cont. Ray.* 197.

If the Iſſue upon *Non eſt Factum* is found for the Defendants, the Deed may be kept in Court. 1 *Sal.* 215.

But ſhall not be cancelled, nor kept upon a collateral Iſſue. *Ibid.*

So to Debt upon Bond, the Defendant may plead *per Dures*. *Cl. Aſſ.* 77. *Bro. R.* 200. (2 W. 19.) *Per Dures.*

So to Debt for Arrears of an Account. *R.* 1 *Leo.* 13.

And it will be *Dures*, if a Man is forced to give a Bond, *&c.* by a wrongful Impriſonment. 2 *Inſt.* 482.

As, when he was under an Arreſt without legal Proceſs.

Or by the Proceſs, Warrant, *&c.* of him, who had no Juriſdiction.

So if a Man, arreſted by legal Proceſs, be forced by tortious Uſage in Priſon. 2 *Inſt.* 482.

But, without Plea of *Dures*, the Bond, *&c.* ſhall not be avoided; for it is not void, but only voidable. *Ibid.*

Replication. To this the Plaintiff may reply, that the Defendant was *ad Largum*, and not *per Dures*. *Cl. Aſſ.* 77. *Bro. R.* 200.

But a Man ſhall not plead *Dures* to a Deed, acknowledged by him, to be inrolled upon Record. 1 *Rol.* 862. *l.* 15.

So, it is no Plea for a Surety for *B.* that the Bond was obtained by *Dures* of *B. R.* 2 *Cro.* 187.

(2 W. 20.) *Per Minas.* So *per Minas*. *Cl. Aſſ.* 72.

And Menace of Life, Member, Mayhem, or Impriſonment, is ſufficient to avoid a Deed. 2 *Inſt.* 483.

But Menace of Battery is not ſufficient to avoid a Deed. *Ibid.*

Nor Menace of burning his Houſes. *Ibid.*

Or taking or deſtroying his Goods; for he may recover Damages for them. *Ibid.*

Replication. To this the Plaintiff may reply, that it was voluntary, and not *per Minas*. *Cl. Aſſ.* 72.

(2 W. 21.) Coverture. So to Debt by a *Feme Covert*, as Sole, the Defendant may plead in Bar, that *A.* and ſhe are married. *Sho.* 50.

So in Debt, or Action upon the Caſe, by a Man againſt a Woman. *R. Ray.* 395.

But in Debt by Huſband and Wife, he cannot plead *Ne unques accouple*, *&c.* for the Trial would be altered. *R. Sal.* 437.

(2 W. 22.) Within Age. So to Debt upon Bond the Defendant may plead, that he was within Age. *Cl. Aſſ.* 76. *Aſh. Ent.* 273.

So to Debt on Simple Contract, if it was not for Neceſſaries. *Vide Enfant*, (B. 5.)

And it ſhall not be intended for Neceſſaries, if it be not alledged, and therefore if the Defendant pleads within Age, and the Plaintiff demurs, there ſhall be Judgment for the Defendant. *R.* 2 *Cro.* 560.

Replication. To this Plea, the Plaintiff may reply, that the Defendant *fuit plenæ Ætatis et non infra*. *Cl. Aſſ.* 76.

He may reply to Part *full Age*, to the Reſidue *for Neceſſaries*; tho' all the ſame Day. *R.* 1 *Sal.* 223.

To *Within Age* pleaded to Debt upon Contract, the Plaintiff may ſay, *that the Defendant was indebted to him for neceſſary Apparel, Phyſick, Victuals*, *&c.* *Cro. El.* 583.

[To Plea of Infancy, to *Aſſumpſit* on a Farrier's Bill, Plaintiff muſt reply generally, Neceſſaries for the Infant, not Neceſſaries for his Horſe. *Clowes* v. *Brooke*, *M.* 12 *G.* 2. *Str.* 1101. *Andr.* 277.]

And if there is a Bill for the Debt, *That he was indebted for Neceſſaries, and the Bill given for Security of Payment*. *Aſh. Ent.* 273.

And it is ſufficient to rejoin, that it was not for Neceſſaries generally, without ſaying that the Money, or any Part thereof, was not for Neceſſaries. *R. Lut.* 241. *Carth.* 110.

(2 W. 23.) Statute of Uſury. That the Bond was given upon an uſurious Contract. *Co. Ent.* 168. *b.* 2 *Vent.* 80. *Clift* 185.

And it may be pleaded, without reciting the Statute. *Bro. V. M.* 255.

But

But the Defendant, by his Plea, muſt ſhew the uſurious Agreement ſpecially, and how much more than legal Intereſt was given. *R.* 3 *Mod.* 35.

So, he muſt expreſsly aver, that the Agreement was, for giving Day of Payment, *&c.* *R. Jon.* 410.

Quod corrupte agreatum fuit. *Cro. Car.* 501.

To this the Plaintiff may reply, *Quod non corrupte agreatum fuit.* Replication.

Quod licite barganizavit, with a Traverſe of the corrupt Agreement. *Cl. Aſſ.* 324.

That it was for a lawful Debt with a Traverſe, *&c.* *Clift* 185.

[So on a Note, Plaintiff may reply that the Note was given for a juſt Debt; *abſque hoc* that it was agreed *Modo et Forma*, as Defendant pleads. *Cooke* v. *Ratcliffe*, *T.* 9 *G.* 2. *B. R. H.* 287.]

That it was a Miſtake of the Scrivener, with ſuch Traverſe. 2 *Vent.* 82. *R. Cro. Car.* 501.

So, if the Defendant avers the Manner of the Agreement, the Plaintiff may traverſe the Averment. *Semb. Hard.* 418.

That the Plaintiff was outlawed. *Bro. V. M.* 460. *R. Ow.* 22. *Vide ante*, (2 G. 4.)—*Abatement*, (E. 2.) (2 W. 24.) Outlawry *&c.*

So, tho' the Plaintiff was outlawed after the Action brought. 1 *Sal.* 178.

So, *that the Plaintiff was attaint of Felony, &c.* *Bro. V. M.* 252. *Lut.* 610. *Vide Abatement*, (E. 3.)

That the Plaintiff's Teſtator was Felo de ſe, and the Defendant has paid to the King's Grantee. *Clift* 190.

So it is ſufficient to ſay, *debito Modo utlagat' fuit*, without ſhewing how. *Dub.* 2 *Vent.* 282.

But to ſay, *Et Sciend' eſt quod A. utlagat' fuit*, is not good. *R.* 1 *Sid.* 173.

And it is not neceſſary to produce it *ſub Pede ſigilli*, when the Plea is in Bar. *Lut.* 1514.

And it is not neceſſary to ſay, *after the laſt Continuance*, that he was outlawed ſince the Declaration. 5 *Mod.* 11.

But in an Action againſt an Executor or Adminiſtrator, Outlawry of the Teſtator or Inteſtate is no Bar; for he may have Aſſets not forfeited. *Semb. Cro. El.* 575. *R. Cro. El.* 851. *Hut.* 53.

To a Bond given to a Sheriff *Colore Officii*, or for Eaſe and Favour, the Defendant may plead the *St.* 23 *H.* 6. 10. 1 *Sand.* 157. *Dy.* 119. *b.* (2 W. 25.) The *St.* 23 *H.* 6. 10. that it was to a Sheriff, *&c.* *Colore Officii.*

So to a Bond given to the Marſhal of *B. R.* Warden of the *Fleet*, *&c.* 1 *Lev.* 254. 1 *Sand.* 162. 1 *Sid.* 383. *R. Cro. El.* 66.

But the Statute is no Plea, except as againſt the Sheriff, his Bailiffs or Miniſters, as, Gaolers, *&c.* *Cro. Car.* 309.

It is no Plea againſt a Serjeant of the Marches in *Wales*; for he is not an Officer within the Statute. *Semb. Cro. Car.* 309.

Nor againſt the Serjeant at Mace of the Houſe of Commons. *R.* 1 *Lev.* 209. *Ray.* 62. *R. Hard.* 464. *Dub.* 1 *Sid.* 384.

Nor to a Bond to an Officer of an Inferior Court, upon an Arreſt out of his Juriſdiction. *R. Cro. Car.* 309.

And therefore, if a Bail-bond be not conformable to the Statute in the Condition, it will be void: As, if it does not ſay in certain before what Juſtices, or in what Court, the Defendant is to appear. *Dy.* 364. *a. in Marg.*

So, if it does not ſay in what Suit: As, if it ſays *in Placito Debiti*, where the Writ is *in Placito Tranſgreſſionis ac etiam Billæ* for 40*l.* Debt. *Semb.* 1 *Vent.* 233. *But afterwards R. cont.* for it is ſufficient that the Condition ſhews the Time and Place of Appearance, and in what Suit. 2 *Jon.* 138. *Mod. Ca.* 122. *Vide Ray.* 220. 2 *Lev.* 35.

So, if he takes only one Bond for three Defendants, who are ſued ſeverally. *Mod. Ca.* 122.

So, if the Day of Appearance be after the Term, or impoſſible. *Semb.* 3 *Lev.* 74. *Aff. Mills* v. *Bond*, *M.* 7 *G. Fort.* 563.

So, if the Bond be without any Condition. 10 *Co.* 100. *a.*

Or taken of him who is not bailable. 10 *Co.* 100. *b.*

If the Bond be to the Sheriff not by the Name of his Office. 2 *Jon.* 138.

Or to the Sheriff *in Com' per dict'* for *prædict'*. *R. Pal.* 378.

Or to another by the Name of Sheriff, and not to the Sheriff. 10 *Co.* 100. *b.*

But, if the County be named, and it be to the Sheriff, without saying *de Com' prædict'*, it will be good. *R.* 2 *Lev.* 123.

[To take advantage of a Bail-bond's not being made to the Officer by the Name of his Office, *Oyer* of the Bond must be prayed. *Darby* v. *Hammond, P.* 8 G. 2. *Fort.* 371.]

So, if the Bond was to *A.* without saying *tunc Vicecom'*, it is bad, tho' the Declaration be *ad respond' A. nuper Vicecom'*. *R. Cro. El.* 800.

If the Bond be to appear, and also to pay Chamber-Rent. *R. Ray.* 222. 1 *Vent.* 237.

Or, also to indemnify the Sheriff. 10 *Co.* 100. *b.* *R. Dal.* 76.

So, if the Bond adds, *appear, and there receive farther as they shall award.* *Dy.* 364. *a. in Marg.*

So, if the Bond has no Condition, or, which is the same, an impossible one; for then the Bond is single. *Semb.* 3 *Lev.* 74, 75.

So, if it be to appear *coram Majestate suâ*, without saying *coram Domino Rege*. *R.* 2 *Lev.* 177.

Ad respond' Billæ for 100*l.* without saying at whose Suit. 2 *Lev.* 177.

If it be to pay for a Debt. 10 *Co.* 100. *b.*

So the Statute is no Plea, if the Bond was taken without legal Process; for he ought to plead *Dures.* 2 *Jon.* 76. *Semb. Cro. El.* 646.

But a Bond, that the Defendant appear Personally, is good, tho' the Statute says, *No Sheriff shall take Obligation but by Name of his Office, on Condition that the Prisoner shall appear at the Day and Place as the Writ shall require.* Dy. 364. *in Marg.* *R.* 2 *Leo.* 78. 10 *Co.* 101. *Sav.* 81. *Cro. El.* 776.

[A Bail-bond is good, though made two Days after the Return of the Writ; for Defendant has four Days to put in Bail. *Belgardine* v. *Preston. P.* 8 G. *Fort.* 365.]

[If the Bail-bond is for more than the Sum in the Writ, it is not void; it is only a Misdemeanor in the Officer. *Jenyns* v. *Goostrey, H.* 3 G. 2. *Fort.* 366. *Rush.* v. *Rush, P.* 6 G. 2. *C. B. Fort* 370]

[Bail-bond is good, though the Indorsement of the Writ is different from the *ac etiam*. *Fromanteel* v. *Williams, H.* 3 G. 2. *Fort.* 367.]

So that the Defendant appear, *&c.* and *then and there answer, &c.* for it is *tantamount* to *ad respondendum* as the Writ speaks. *R. Dy.* 364. *a. Dub.* 2 *Leo.* 78. *Acc.* 10 *Co.* 101.

That he appear before *Justic. Nostris de B.* without saying *apud Westm'*, is sufficient. *R.* 2 *Vent.* 238.

Or, *Coram Rege in Cancellar'*, tho' it says, *apud Westm'*, instead of *ubicunque*. *Semb.* 2 *Vent.* 238. *Cont.* 1 *Vent.* 234.

Or, *Coram Just' de B. R. apud Westm.'* without saying, *ad Placita coram Nobis, &c.* *R.* 2 *Jon.* 46. 2 *Lev.* 180.

In the *Star-Chamber*, without saying *Coram Rege et Concilio, &c.* *Per Twisd.* 2 *Jon.* 46.

[On a special Original returnable *coram Dom. Rege, ubicunque tunc fuerit in Anglia*, a Bail-bond without the *ubicunque, &c.* is good: for there are no set Forms of Words for these Bonds, and if in Substance they are to appear according to the Design of the Writ, it is sufficient. *Shuttleworth* v. *Pilkington, T.* 14 G. 2. *Str.* 1155.]

That he appear *ad respondendum de Placito Debiti* generally, where the Writ is for 350*l.* *R.* 2 *Cro.* 286.

Or, *ad respondendum*, without saying *in quo Placito*, if the Writ is recited in the Condition. *R.* 2 *Lev.* 123.

[If the Process is in Trover, and the Condition of the Bail-bond to answer to a Plea of Trespass, yet it is good; the *ad respond.* is surplusage. *Davenport* v. *Parker, M.* 4 G. 2. *C. B. Fort.* 368.]

So

So a Bond to ſave harmleſs from paſt Eſcapes is not void, otherwiſe from future Eſcapes. *Mod. Ca.* 225.

So a Bond to the Party, and not to the Sheriff, to pay or give Security for ſuch a Sum, or render himſelf to Priſon, is not within the Statute. *R.* 2 *Mod.* 305.

So a Bond that he will be a true Priſoner, is not within the Statute, if he traverſes the Eaſe and Favour. *R.* 1 *Sid.* 383. *Per Holt, Sal.* 438. *Semb. cont.* 10 *Co.* 100. *b.*

Or, by a Perſon, not in his Cuſtody, for Payment of Money levied upon a *Fieri Facias* into Court at the Return. *R.* 10 *Co.* 99. *b.*

Or, for the due Execution of a *Fieri Facias*. *R.* 10 *Co.* 100. *a.*

Or, for Payment of Money to the King upon an Extent. 10 *Co.* 100. *a.*

So the Bond is not void, tho' the Bail be inſufficient. *R. Cro. El.* 808, 852, 862. *Mo.* 636. *Vide Bail*, (K. 5.)

So the Bond is not void, if given by a Perſon not in his Cuſtody, or who need not appear. *R. Mo.* 542. *D.* 4 *Mod.* 187.

Yet a Bond taken by him, who is no Miniſter within the *St.* 23 *H.* 8. 10. in a Caſe not bailable, is void by the Common Law. *R. Hard.* 464.

Or, if the Bond be for Profit to himſelf. *Sal.* 438.

Or, to let to Bail a Man not bailable. 10 *Co.* 100. *b.*

Or, for his Fees before Execution done. *R. Hut.* 52.

[A Bail-bond may be aſſigned by the Sheriff after he is out of his Office. *Hange* v. *Manning*, *T.* 8 *G. Fort.* 365.]

[If the Aſſignment is ſaid to be *ſigillat. & atteſtat.* it is well, though not ſaid to be under Hand and Seal. *Watkyns* v. *Harris*, *H.* 3 *G.* 2. *Fort.* 367.]

[If to a Bail-bond given to the Priſon-keeper of the Marſhal's Court, the Statute be pleaded, and that *A.* ſued forth of the Palace, it is bad; it ſhould be ſued forth of the Court of the Palace. *Derby* v. *Roſe*, *H.* 8 *G.* 2. *Fort.* 370.]

[Bail-bond on an Attachment (except out of Chancery for Want of Appearance or Anſwer) is void. *Barnes* 64.]

To this Plea the Plaintiff may ſay, that it was for Security of his Priſoner, and traverſe that it was for Eaſe and Favour. *R.* 1 *Sand.* 162. 1 *Lev.* 254. 1 *Sid.* 383. Replication.

And if Iſſue be thereon, Little Evidence will be ſufficient. *R.* 1 *Sid.* 383.

So to a Bond the Defendant may plead, that it was given for Money won at Play, contrary to the *St.* 16 *Car.* 2. *Clift* 187. 5 *Mod.* 3. *Lut.* 485. *Vide Ante* (2 G. 8.) (2 W. 26.) The *St.* 16 *Car.* 2. againſt Gaming.

[The Defendant muſt ſhew at what Game the Money was loſt. *Colborne* v. *Stockdale*, *H.* 8 *G. Str.* 493.]

He muſt ſhew the Statute.

That he loſt upon Tick at the ſame Time above 100 *l.*

That the Bond was given for the ſame Sum.

But the Statute is not pleadable, where Debt is brought for a Wager when he was at Play. *R.* 5 *Mod.* 6. *Lut.* 487.

[It is no Plea to a Bond that it was given for the Repayment of the Moiety of a Sum paid by the Obligee (with whom the Obligor was jointly concerned) for compounding Differences for not delivering Stock, *&c.* and not performing Contracts, *&c.* which are prohibited by *Stat.* 7 *G.* 2. *c.* 8. *Faikney* v. *Reynous*, *P.* 7 *G.* 3. 4 *B. M.* 2069.]

That it was given upon the Sale of an Office within the *St.* 5 *Ed.* 6. *F,g.* 45. (2 W. 27.) The *St.* 5 *Ed.* 6. againſt Sale of Offices.

But it is no Plea to Debt upon a Bond, that it was given for Compoſition of Felony; for it is a bare Fact, which is no Plea in Bar of a Specialty. *Semb. F,g.* 74.

So to Debt upon Bond the Defendant may plead a *Tender, and always ready*. 2 *Mod. Int.* 234. *Bro. V. M.* 213. (2 W. 28). Tender. *Vide* Condition. (G. 6, (&c.

If Iſſue be upon the Tender, there muſt be an actual Offer.

But where the Goods are cumberſome, the Bringing of them to a Place where the Party may well receive them, and the Offer of them there, is ſufficient. *R. Sho.* 149, 150.

This Plea does not go in Bar of the Action, but of Damages. *R.* 1 *Vent.* 322. 2 *Lev.* 209. *R. upon a ſingle Bill. Carth.* 133.

But if Tender be upon a Bond with a Penalty, it muſt be in Bar to the Action. *R. Carth.* 133.

And it cannot be pleaded after an Imparlance. *Dub. Dyer* 300. *Semb.* 36 *H.* 6. 13. 2 *Cro.* 627. 5 *Ed.* 4. 141. *R. Lut.* 226, 239. *Adm.* good to a Bond, tho' in no other Caſe. 2 *Mod.* 62.

If the Declaration has ſeveral Counts, it muſt be pleaded to a Count in certain. *R. Lut.* 239.

Muſt ſhew the Day of the Tender. 1 *Sid.* 10.

And if it be at a Day after the Time limited by the Condition, *abinde* always ready, is bad. *R. M.* 9 *W.* 3. *B. R. inter Giles and Hart.* (*Vide* 1 *Ld. Ray.* 254. *Sal.* 622.)

Or at a Day after the Time of Requeſt alledged in the Declaration. *R. Lut.* 227.

Muſt alledge always ready after the Tender, for *ſtill* ready is not ſufficient. *Dub. Dy.* 300. *b. Acc.* 2 *Cro.* 627.

There muſt be a *Profert* of the Money in Court. *R.* 2 *Rol.* 524. *D.* 9 *H.* 6. 65. *Bro. Touts Temps priſt.* 3, 5, 6. *R. Lut.* 283, 368.

But, where it appears that the Thing to be delivered is ſo ponderous that it cannot be brought into Court, it is not neceſſary. *Co. Lit.* 207. *a.* 2 *Rol.* 524. *E.* 9 *H.* 6. 65. *Aſh. Ent.* 276.

So, when a Forfeiture is to be ſaved, a Tender is neceſſary. *R.* 1 *Vent.* 322. 3 *Keb.* 800, 810, 828. *Ray.* 419. *R.* 3 *Lev.* 103.

Otherwiſe, it is not neceſſary. *R. Ray.* 419. *Cont.* in Rent. 1 *Vent.* 322. 2 *Lev.* 209.

The Tender alledged muſt be legal: And therefore it is not ſufficient to ſay *Paratus fuit ſolvere*, without ſaying *et obtulit. R. Sal.* 584.

A Tender of Corn, *&c.* muſt be with an *uncore priſt. R. Dy.* 25. *a.*

So, if by Bond Money is to be paid within two Months after the Death of the Obligee, if he pleads that within two Months there was no Executor or Adminiſtrator, he muſt ſay *uncore priſt. R. Ray.* 416.

It is ſufficient to alledge, that no one was ready to receive, in the Words of the Condition. And therefore, if the Condition was *to pay to B.* if it is ſaid *prædict' B. non fuit paratus ad recipiendum*, it is ſufficient, without ſaying *nec aliquis alius. R. Yel.* 38. 2 *Cro.* 14.

So Surpluſage does not prejudice; As, if he ſays, no one ready *ad exigendum et recipiendum*, tho' a Demand was not requiſite. *R. Yel.* 38. 2 *Cro.* 14.

So if a Bond be to pay a Legacy, which was payable upon Requeſt, it is ſufficient to ſay *touts Temps, &c.* for the Bond does not alter the Nature of the Legacy. *R.* 1 *Leo.* 17.

But where Damages are to be recovered, and not the Debt, a Tender may be pleaded without *uncore priſt:* As, in Covenant to pay to *A.* or his Order, a Tender to *B.* who has an Order, and Refuſal, is a good Plea, without ſaying *uncore priſt. R. Sho.* 130.

So in *Replevin*, if the Defendant avows for a Rent-Charge, the Plaintiff may plead a Tender, without a *Profert in Cur'. R. Sal.* 584.

And tho' the Plaintiff accepts the Money brought into Court, the Plea will be bad. *R. Sal.* 584.

But where a Tender is pleaded, and the Money brought into Court, and the Plaintiff accepts it, he cannot afterwards proceed for Damages. *Per Holt, B. R. H.* 13 *W.* 3. *Horne and Lewin.* (*Vide* 1 *Ld. Ray.* 639. *Sal.* 583.) *T.* 1 *An. Breton and Souter.* (*Vide* 2 *Ld. Ray.* 774.) *R.* 2 *Cro.* 126.

So now by the *St.* 4 & 5 *An.* 16. At any Time pending the Action on a Bond with a Penalty, if the Defendant brings into Court all Principal and Intereſt due, and

and all Coſts expended in Law or Equity, on ſuch Bond, the Court may diſcharge the Defendant from ſaid Bond. *Vide Ante*, (C. 10.)

But ſuch Proffer cannot be made before Bail to the Action. *Mod. Ca.* 11.

So to Debt upon Bond the Defendant may plead *ſolvit ad Diem*; for before Breach it is well without an Acquittance. *Sal.* 508. (2 W. 29.) *Solvit ad Diem.*

So Payment of Part with an Acquittance *puis darrein Continuance*; for this goes in Bar. *R. Sal.* 519.

And now by the *St.* 4 & 5 *Ann.* 16. If he has paid before the Action brought, tho' it was not ſtrictly at the Day, he may plead it.

If the Condition be that he pay at *D.* he muſt plead *Quod ſolvit* at *D.* and the Omiſſion is not ſupplied by *ſecundum Formam Conditionis prædict'* upon a ſpecial Demurrer. *R.* 3 *Lev.* 245.

If it be, that he pay within ſix Months, he ought to plead Payment within the Time. *R. Cro. El.* 823.

If the Condition be to deliver 20 *l.* or ten Cows, at the Obligee's Election, he muſt plead Tender of one and the other. *R.* 1 *Leo.* 68.

If the Condition be that he pay upon Aſſurance of an Eſtate, he muſt ſhew when the Eſtate was conveyed; for Payment at ſuch a Day is not ſufficient, for it does not appear that it was paid upon the Aſſurance. *R.* 2 *Mod.* 33.

So, it will be a good Plea that he paid before Action *viz.* ſuch a Day, which is before the Day; for the Words after the *viz.* ſhall be rejected. *R.* 2 *Mod. Ca.* 345.

But it is no Plea *Quod fuit itinerans ad ſolvendum ad Diem* and he was impriſoned by *Covin* of the Obligee. *R. Cro. El.* 672.

That it was not demanded, tho' payable upon Demand; for the Suit is a Demand. *R.* 2 *Cro.* 242, 3.

Quod ſolvit pendente Lite, without a Specialty for his Diſcharge. *R. Cro. El.* 157, 884.

Or after the Day, without an Acquittance for it. *R.* 5 *Co.* 43. *a. Cro. El.* (455.) *Mo.* 692.

Or, that the Plaintiff agreed to give a longer Day for Payment. *R. Cro. El.* 697.

[In Debt on Bond from Defendant's Teſtator and *A.* jointly and ſeverally, if Defendant pleads that Teſtator in his Life-time, and *A.* paid off the Bond, and Plaintiff replies, they did not pay it *Modo et Forma, &c.* and it appears, that Teſtator paid Part in his Life, and *A.* the Reſt after his Death, this does not maintain the Plea. *Hudſon* v. *Stalwood*, *T.* 8 *G.* 2. *B. R. H.* 133.]

Solvit ad Diem, ought to be concluded with an Averment, and not to the Country. *R.* 1 *Sid.* 215.

[If Payment in full is pleaded, it is ſufficient if it is proved that Plaintiff accepted the Sum paid as in full. *Price* v. *Brown*, *H.* 12 *G. Str.* 691.]

[If any Intereſt has been paid after the Day upon an old Bond (where the only Evidence of Payment is the Length of Time) Defendant muſt plead upon *Stat.* 4 & 5 *Ann. c.* 16. *Moreland* v. *Bennet*, *M.* 11 *G. Str.* 652.]

[It is now an invariable Rule, that if there is no Demand for Money on a Bond for twenty Years, the Judges will direct a Jury to find it ſatisfied, from the Preſumption ariſing from the Length of Time. *Gratwick* v. *Simpſon*, *H.* 1740. 2 *Atkyns* 144.]

If he pleads Payment before the Day, the Plaintiff may demur. 2 *Mod. Ca.* 346.

[If the Bond is conditioned to pay *on or before*, Payment before the Day, *ſcil.* ſuch a Day, is good. *Anon. T.* 3 *G.* 3. 2 *Wilſ.* 173.]

[If Money is payable *at or before* ſuch a Day, and is paid before, it ſhould be pleaded, paid at ſuch precedent Day; and Plaintiff may reply, not paid that Day, nor before, nor after. *Fletcher* v. *Hennington*, *P.* 33 *G.* 2. 2 *B. M.* 944.]

So

(2 W. 30.) Releaſe.

So to Debt upon a Bond or Specialty, the Defendant may plead a Releaſe by the Plaintiff, after the Bond given. *Vide Poſt*, (3 M. 12.)—*Vide ante*, (2 V. 11.)

If there are two Obligees, a Releaſe by one. 2 *Rol.* 410. *l.* 47.

If the Bond was to a Woman before *Coverture*, a Releaſe by the Huſband. 2 *Rol.* 410. *l.* 50, 52.

A Releaſe by one Executor or Adminiſtrator, where the Debt was to the Teſtator, or to them in Right of the Teſtator. 2 *Rol.* 411. *l.* 7, 10.

But if the Releaſe produced has a material Variance from the Releaſe in the Plea, it is bad: As, if it be of a different Date. *R.* 2 *Vent.* 131.

To a Releaſe pleaded, the Plaintiff, being a Party to the Deed, cannot plead *Ne releſſa pas*, but muſt demur, or ſay *Non eſt Factum*. *R.* 2 *Bul.* 55.

Otherwiſe, if he be a Stranger to the Releaſe. 2 *Bul.* 55.

So, if there are two Obligors, who bind themſelves jointly, a Releaſe to one may be pleaded in Bar by both. 2 *Rol.* 412. *l.* 29.

So, if they are bound jointly and ſeverally. 2 *Rol.* 412. *l.* 22. *Sal.* 574.

Tho' the Releaſe to one was before the other had executed the Deed. *R.* 2 *Rol.* 412. *l.* 35.

So, if they are ſeverally bound for the ſame Sum. *Semb.* 2 *Rol.* 412. *l.* 45.

So, if the Bond be by *A.* for the faithful Service of *B.* a Releaſe to *B.* *before* the Condition broken is a good Bar. *R.* 3 *Leo.* 45.

But in Debt for Damages recovered in a real Action by two Demandants, a Releaſe by one is no Bar; for this ſavours of the Realty. 2 *Rol.* 411. *l.* 17.

So in *Quare Impedit* by two, the Releaſe of one is no Bar to the other. 2 *Rol.* 411. *l.* 15.

Nor in Ejectment. 2 *Rol.* 411. *l.* 20, 45.

Nor in Error to reverſe a Fine. *R. Skin.* 343.

So, if a Bond be delivered by two to a third Hand, to be delivered upon Condition, a Releaſe of the Condition by one, is no Bar to the other; for this goes only in his Diſcharge. 2 *Rol.* 411. *l.* 2.

So, if a Bond be by two, a Releaſe to one, after his Saeling, and before the other has ſealed and delivered, is no Diſcharge to the other. *R. Cro. El.* 161.

So in *Replevin*, if the Defendant makes Coniſance in Right of *B.* and there is Judgment for the Plaintiff, in *Scire facias* upon the Judgment, a Releaſe by *B.* is no Plea. *R.* 2 *Rol.* 412. *l.* 5. *Vide ante*, (2 V. 11.)

So, if a Bond be, that *B.* ſhall ſerve truly, a Releaſe to *B.* being a Stranger, *after* the Forfeiture of the Bond, is no Plea. *R.* 3 *Leo.* 45.

So, if the Bond was to *A.* as Truſtee for *B.* a Releaſe by *B.* with an Averment that it was in Truſt for him, is no Bar. *R. Dal.* 38. 1 *Lev.* 235. 3 *Lev.* 140.

So a Releaſe by *A.* after an Aſſignment by Commiſſioners of Bankruptcy againſt *B.* *R. Pal.* 505.

Nor a Releaſe by *A.* of all Actions on his own Account. *R.* 1 *Vent.* 35.

[A Releaſe by Plaintiff's Teſtator's Will ſealed, cannot be pleaded to Debt on Bond. *Parſons* v. *Coward*, *H.* 10 *G.* 2. *B. R. H.* 357.]

So, if a Man receives Part of a Debt due upon Specialty, and releaſes it, this Releaſe does not diſcharge the Reſidue. *Vide ante*, (2 G. 14.)

So, if a Bond is in the Penalty of 400*l.* for Payment of 200*l.* and he receives and releaſes 300*l.* *R.* 2 *Rol.* 413. *l.* 15.

So, it is no Plea that he gave another Bond in Satisfaction. *R. Cro. El.* 716. *R. Cro. Car.* 85. *R. Hob.* 86. *Acc.* 2 *Cro.* 579. *Vide Poſt*, (2 W. 46.)

Or, that the Plaintiff accepted a *Statute-Staple* after the Day of Payment in Satisfaction. *R. Cro. Car.* 86. 6 *Co.* 44. *b.*

Or, that the Defendant agreed by Indenture to ſell Land in Satisfaction of the Debt. *R. Cro. Car.* 193.

Or, enfeoffed the Plaintiff in Satisfaction of the Debt. *Cro. Car.* 86. *R.* 2 *Cro.* 650.

Tho' the other Bond is after or before the Day of Payment by the prior Bond. 2 *Cro.* 100.

Yet, if the Plaintiff does not demur, but joins Iſſue, that there is no other Bond, and there is a Verdict for the Defendant, the Plaintiff ſhall not have Judgment. *R.* 1 *Brownl.* 74. *Hob.* 69.

So to a Bail-bond the Defendant may plead, *Comperuit ad Diem.* *Bro. R.* 203. (2 W. 31.) *Comperuit ad Diem.*

[But if, on juſtifying Bail, Proceedings on Bail-bond are ordered to be ſtopt, and Bond to ſtand for Security; and, after Judgment in original Action, Plaintiff proceeds on Bond, Defendant cannot plead *comperuit, &c.* *Barnes* 85.]

So, if a Man covenants, *&c.* that he will not ſue for a Year, it will be a good Plea, if he ſues within the Time. *Dy.* 140. *a. in Marg.* (2 W. 32.) Covenant *&c.* that he would not ſue.

So to Debt upon Bond the Defendant after *Oyer* may plead Condition performed. *Vide Ante,* (E. 25, 26.)—(2 V. 13.) (2 W. 33.) Condition performed.

And it is ſufficient to plead in the Words of the Condition.

So, if the Condition be to pay, if a Ship returns, (Perils of the Sea excepted) but if it is loſt, that the Obligation ſhall be void, it is ſufficient to ſay it was loſt, without ſaying by Peril of the Sea. *R.* 2 *Lev.* 7.

If the Condition be in the Disjunctive, it is ſufficient to plead Performance of one Part or the other.

And if the Performance is to be upon a prior Act by the Plaintiff, he may plead that the Plaintiff has not done ſuch firſt Act. *R.* 1 *Mod.* 265.

If the laſt Words of the Condition are an Inlargement of the firſt, he need not plead to them; for it is ſufficient, if the Plea goes to the material Part of the Condition. *R. Mo.* 477.

So, in Debt upon Bond for Performance of Covenants, if the Defendant pleads *Condition performed,* and the Plaintiff aſſigns Breach for Non-payment of Rent *ſecundum Formam Conditionis prædict',* it will be well on a general Demurrer or Verdict. *R. Hard.* 319.

So in Debt upon Bond for Performance of Covenants in an Indenture, if the Defendant ſhews the Indenture and pleads, *Covenants performed,* he need not ſay, *Quæ ſunt omnes Conventiones, &c.* *R.* 13 *H.* 7. 19. *b.* *R.* 6 *Ed.* 4. 1.

If the Condition be to perform a Will, whereby a Legacy is given to the Poor or Churchwardens, it is ſufficient to ſay, that he paid it to them, without naming them. *R.* 1 *Leo.* 17.

But the Defendant cannot plead *Conditions performed,* to a Bond for Performance of Covenants, without *Oyer* of the Deed, which contains the Covenants. *R.* 1 *Sid.* 50, 97, 425. 1 *Vent.* 37. *R. Al.* 72. *Vide ante,* (P. 1.—2 V. 13.)

And he muſt make a *Profert in Cur'* of the Deed, otherwiſe it will be bad upon a ſpecial Demurrer. *R.* 1 *Sand.* 9. *Vide ante,* (P. 1, 2.)

And ſhew the Subſtance of the Deed in *Latin,* under Seal of the Plaintiff, or, if he has it not, the Court *ex Gratiâ* will direct that the other Party ſhall give him a Copy. 1 *Sand.* 9. 1 *Sid.* 50.

If the Condition of the Bond be to do ſeveral Things, the Defendant cannot plead Performance generally, tho' all are in the Affirmative, but ſhall anſwer ſpecially to every Particular. *R.* 1 *Lev.* 303. *R. Kel.* 95. *b.* *R.* 1 *Sid.* 215.

Nor if the Things to be done are particular, and in the Affirmative, but he muſt ſhew how and at what Time. *Vide Ante,* (E. 25, 26.)

So, if the Condition conſiſts of ſeveral Parts, he muſt anſwer to All the Particulars. *R. Mo.* 591. *R.* 2 *Mod.* 305.

[So to Debt on Bond for a Receiver of Rents to account, and behave himſelf as a Steward ought to do, if Defendant pleads he received but one Penny, which he paid to Obligee, it is bad; for he ſhould alſo have pleaded, that he had behaved as a Steward ought. *Fletcher* v. *Richardſon, M.* 10 *G.* 2. *B. R. H.* 322.]

Yet where the Condition conſiſts of multifarious Particulars, *Performance generally,* has been allowed. *Lut.* 593.

So the Defendant cannot plead *Quod Conditio Obligationis nunquam fracta fuit*, but muſt ſhew how it was performed. *R.* 2 *Vent.* 156.

That no Covenants or no Suits are mentioned in the Condition; for he is eſtopped. *R. Cro. El.* 756. *Vide Ante*, (2 V. 6.)

If the Condition is to ſave harmleſs from Rent for a Tenement againſt *A.* it is no Plea, That no Rent is due, but he ſhall ſay, *Not damnified*. *R. Sav.* 90.

Yet, if the Condition is to indemnify, *&c.* the Defendant may plead in the Negative, *Non fuit damnificatus*. *Vide Ante*, (E. 25.)

Tho' the Condition be to acquit, diſcharge, and keep indemnified. *R.* 3 *Mod.* 252. *R.* 5 *Mod.* 243. *Adm.* 2 *Sand.* 84.

[The only Pleas to Bond to indemnify, are, *non damnificat.* or by Plaintiff's own Fault. *Halland* v. *Malken*, *T.* 33 & 34 *G.* 2. 2 *Wilſ.* 126.]

[If Defendant in Debt by Churchwardens, on a Bond to indemnify Pariſh from a Baſtard, pleads *non damnificatus*; Replication he did not provide, and Pariſh paid 5 *l.*; Rejoinder, he did provide; and Verdict for Plaintiff; Judgment ſhall not be arreſted, becauſe it does not appear on the Record that the Child was born in the Pariſh: for the Court will intend it was proved at the Trial. *Cooke* v. *Pettit*, *P.* 26 *G.* 2. 2 *Wilſ.* 5.]

So, if the Condition be to deliver a Deed, *&c.* it is ſufficient to ſay that he has delivered it. *R. Sal.* 498.

So, regularly, Performance of the Condition ought to be pleaded in the Words of the Condition. *Sal.* 520.

But Excuſe of Performance need not purſue the Words of the Condition: As, if upon a Bail-bond he plead, *Judgment undetermined*, it is ſufficient, without ſaying that the Plaintiff did not diſcontinue, nor was nonſuited. *R. Sal.* 520.

If the Condition be to leave his Wife 50 *l.* it is not ſufficient to ſay that he made his Wife Executrix, and gave her to the Value of 100 *l.* without ſaying that ſhe adminiſtred, and accepted it. *R.* 3 *Lev.* 218.

So, if theCondition be to exhibit an Inventory into the Spiritual Court before 1 *M.* it is not ſufficient to ſay, there was no Court, without ſaying that he was ready at the Day, for he ought to ſhew every Thing poſſible on his Part. *R.* 1 *Sal.* 172.

So, if the Condition be to levy a Fine, it is no Plea, that no Writ of Covenant was ſued, without ſaying that he was ready at the Day. 1 *Sal.* 172.

Or to pay Money to *A.* it is no Plea that *A.* did not come, without ſaying that he was ready there. *Ibid.*

If the Condition be to repair, it is no Plea that he repaired till ſuch a Day, and then pulled down and rebuilt. *R. Sav.* 96, 97.

If it be, that his Wife may make a Deviſe of 100 *l.* to be paid within a Year after her Death, it is no Plea to ſay that his Wife deviſed 100 *l.* if he does not ſay alſo that he paid it. *R. Cro. Car.* 597.

[If *A.* gives Bond, conditioned to pay *B.* ſo much Money as *C.* is awarded to pay him, and *C.* is awarded to give *B.* a promiſſory Note, it is within the Condition of the Bond. *Booth* v. *Garnett*, *M.* 11 *G.* 2. *Andr.* 28.]

[Wherever Defendant pleads Performance, Plaintiff muſt aſſign an abſolute Breach; but this is not neceſſary, if he pleads a collateral Matter, as a Releaſe. *Tryon* v. *Carter*, *M.* 8 *G.* cited and agreed to. *Fletcher* v. *Hennington*, *P.* 33 *G.* 2. 2 *B. M.* 944.]

(2 W. 34.) Upon a Statute or Recogniſance. Releaſe.

To Debt upon a Statute or Recogniſance, the Defendant may plead a Releaſe. *Vide Ante*, (2 W. 30.)

A Releaſe by one Conuſee. 2 *Rol.* 411. *l.* 5.

But a Releaſe of Part due upon a Statute or Recogniſance does not diſcharge the Reſidue. *R.* 2 *Rol.* 413. *l.* 5. *Vide Ante*, (2 W. 30.)

(2 W. 35) Defeaſance.

So the Defendant may plead a Defeaſance for Payment of a leſs Sum, which he has paid. 1 *Bro. Ent.* 174. *Vide Poſt.* (2 W. 37.)—*Ante*, (2 V. 12.)

A Defeaſance that he ſhall not be ſued till ſuch a Day, and, if he be, that he may plead it in Diſcharge. *Hard.* 113. *But it was reſolved cont.* where it

was not an abſolute Diſcharge; for it ſhall be but a Covenant. *Sho.* 46. *Carth.* 64.

A Letter of Licence, by which it is agreed that, if he ſues within ſuch a Time, the Debt ſhall be forfeited. *R. Carth.* 64.

So to Debt for Rent he may plead a Covenant to deduct ſo much for Charges, *&c.* *R.* 1 *Lev.* 152.

But a Defeaſance, which is not in Writing under Seal is not ſufficient. *R. Mo.* 573.

But to Debt upon a Statute, or Recogniſance, it is no Plea that he had Judgment before in a *Scire facias* upon the ſame Recogniſance. *R. Cro. El.* 608.

(2 W. 36.) Upon Judgment.

To Debt upon a Judgment the Defendant may plead, that the Plaintiff had ſued out Execution by *Elegit*, upon which an Extent was made. *Dy.* 299. *b.*

And it will be good without ſhewing the Return of the Extent. *Dy.* 299. *b.*

Vide Ante, (2 W. 13.) Execution done.

Or that the Plaintiff had Execution by *Fieri facias*. *Adm. Cro. Car.* 328. *R. Sav.* 123.

But it is no Plea, that the Plaintiff ſued out a *Ca. Sa.* and took the Defendant and kept him in Execution till he ſatisfied the Debt. *R. Lut.* 641, 3.

Or that he ſued ſeveral *Elegits*, upon One of which Part of the Debt was levied. *R.* 1 *Lev.* 92.

That Error is depending upon the Judgment in the *Exchequer*. *R. Skin.* 388, 590.

(2 W. 37.) Defeaſance.

So to Debt upon a Judgment the Defendant may plead a Defeaſance. 2 *Mod. Int.* 231. *Vide Ante*, (2 W. 35.)

So now by the *St.* 4 & 5 *An.* 16. If Debt be brought upon any Judgment, if the Defendant has paid the Money due on ſuch Judgment, it may be pleaded in Bar of ſuch Action.

But a Bond given for a Sum, which was in Satisfaction of the Judgment, is no Plea; for being only to give another Action for the Debt, it would not be a Bar to the Bond, *a fortiori* not to the Judgment. *R.* 2 *Cro.* 579. *Vide Condition*, (L. 2, 3.)

So to a *Scire facias* upon a Judgment he cannot plead a Judgment in Debt upon the ſame Judgment. *R. Cro. El.* 817.

(2 W. 38.) *Nul tiel Record.* *When this Plea is neceſſary, Vide Record*, (B.)

So to Debt upon a Judgment the Defendant may plead *Nul tiel Record*. *Vide Ante*, (2 W. 13.)

So, if there is a material Variance between the Judgment and the Declaration: As, if it varies in Day or Continuance. *Lut.* 945. *What Variance is material, Vide Record*, (C.)

So, if it varies in the Attorney's Name. *Dub.* 2 *Mod.* 246.

[Variance from *Scurphey*, in Judgment, to *Curphey*, in Recognizance, fatal. *Barnes* 475.]

[On Debt on Recognizance of Bail, if the Record is conditional, and the Declaration not, Plaintiff cannot have Judgment. *Barnes* 60.]

(2 W. 39.) When Error may be pleaded, when not.

So, if Error be pending on the Judgment in *C. B.* where the Record itſelf is removed, it may be pleaded in Abatement. *R.* 2 *Vent.* 261. *Dub.* 4 *Mod.* 247. *Vide Dett*, (A. 2.)

And he muſt plead in Abatement; for if the Defendant demurs, the Plaintiff ſhall have Judgment. 2 *Vent.* 261.

But to Debt upon a Judgment the Defendant ſhall not plead in Abatement Error depending thereon. *Semb. Lut.* 602.

If Error be in the *Exchequer* or *Parliament* upon a Judgment in *B. R.* for only the Tranſcript of the Record is removed. *R.* 1 *Sid.* 236. *R.* 4 *Mod.* 247. *R. Sho.* 98. *R. Ray.* 100. *R. Sho.* 146. *Carth.* 1, 136. *Vide Dett*, (A. 2.)

Nor can he plead in Bar, Error in the original Judgment. 1 *Rol.* 604. *l.* 20.

Nor

(2 W. 40.) But Matter intitling to an *Audita Querela* cannot be pleaded.

Nor Matter, which intitles him to an *Audita Querela*; for he ſhall be put to his Writ of Error, or *Audita Querela*. 1 *Rol.* 604. *l.* 25.

(2 W. 41.) Nor Arbitrament.

Nor an Arbitrament. 1 *Rol.* 604. *l.* 25.

(2 W. 42.) Demurrer.

Nor can he demur to the Declaration, if it ſhews Error depending upon the Judgment. *R.* 2 *Vent.* 261.

(2 W. 43.) Upon Contract.

To Debt upon a Contract the Defendant ſhall plead *Nil debet*. *Vide Ante*, (2 W. 17.)

Nil debet.

So to Debt upon a Judgment in a County, Hundred, *&c.* not of Record. *Sho.* 71.

To Debt upon a Grant of a Rent-Charge; for he has Remedy alſo by Diſtreſs. *Hard.* 333.

(2 W. 44.) *Nil detinet.*

So, if Debt be in the *Detinet* only, he may plead *Nil detinet*. *Al.* 76.

And if he pleads *Nil debet*, it ſhall be aided after Verdict. *R. Al.* 76.

The Defendant may plead one Plea to Part, and another Plea to the Reſidue of the Debt. 1 *Sal.* 180.

(2 W. 45.) Wager of Law.

So to Debt upon a Simple Contract the Defendant may wage his Law. 2 *Inſt.* 45.

So the Defendant may wage his Law in Debt upon a By-Law. 2 *Lev.* 106.

And in Debt upon an Arbitrament. *Co. Lit.* 295. *a.* *R. Cro. El.* 600.

In Debt upon a Simple Contract, tho' aſſigned to Commiſſioners of Bankrupt. 2 *Lev.* 106.

In Debt for a Penalty, or Amerciament in a Court Baron, Hundred, or other Court not of Record. *Co. Lit.* 295. *a.* *Mo.* 276. 2 *Rol.* 106. *l.* 10. *Bend. pl.* 200. *R.* 1 *Leo.* 203. 2 *Lev.* 106.

So in Debt upon a Recovery in a Court not of Record. *R.* 2 *Vent.* 171. *Cont.* 2 *Mod.* 140.

In Debt upon an Account made before one Auditor only. *Co. Lit.* 295. *a.*

In Debt upon a Contract for Sale of Land. *R. Cro. El.* 750.

In Debt upon Contract where a Bond was given for the Money. *Dal.* 53.

But in Debt upon a Deed or Specialty, the Defendant cannot wage his Law. *Co. Lit.* 295. *a.*

Nor in Debt upon a Statute. *Ibid.*

Or upon an Arbitrament. *Lat.* 213.

So the Defendant ſhall not wage his Law in Debt for *Scavage*, or other Duty, by the Cuſtom of *London*, which is confirmed by Parliament. *R.* 2 *Lev.* 106.

In Debt upon a Judgment in an Inferior Court. *R.* 2 *Mod.* 140.

In Debt upon an Account as Bailiff. *R. Cro. El.* 579.

Nor in Debt for Rent upon a Leaſe for Years. *Co. Lit.* 295. *a.*

Nor in Debt upon an Account before Auditors for Balance or Surpluſage of the Account. *Ibid.*

Or for a Fine or Amerciament in a Leet or other Court of Record. *Ibid.*

Nor in Debt for his Diet. *Per Gaudy*, *Cro. El.* 818.

Nor in Debt to the King, tho' due to the King's Debtor. *Godb.* 291.

So a Man, infamous, cannot wage his Law: As, if he be convict in Attaint, or upon an Indictment of Conſpiracy, Perjury, *&c.* *Co. Lit.* 295.

Nor a Man outlawed. *Co. Lit.* 295. *a.*

Or within Age. *Ibid.*

Nor an Executor or Adminiſtrator; for he ſhall not wage his Law for another's Debt. *Ibid.*

Yet, in Debt againſt Huſband and Wife, *dum Sola*, both may wage Law, *R. Cro. El.* 161.

So, if an *Alien* be Plaintiff, the Defendant ſhall not be allowed to wage his Law. *Co. Lit.* 295. *a.*

Or,

Or, if the Suit be by the King, or for his Benefit: As, in *Quo Minus, &c. Ibid.*

Or, by a Gaoler againſt a Priſoner for his Victuals. *Co. Lit.* 295. *a.* 9 *Co.* 87. *b.*

Or, by an Attorney againſt any one for his Fees. *Co. Lit.* 295. *a.*

Or, by a Servant, retained according to the Statute, for his Salary. *Ibid.*

So Wager of Law ſhall never be allowed, where the Declaration ſuppoſes a Contempt, Treſpaſs, Deceit, or Wrong. *Co. Lit.* 295. *a.*

As, in an Action upon the Caſe or Treſpaſs. 2. *Inſt.* 45. *Co. Lit.* 295. *a.*

So it ſhall not be allowed upon a *Quo Minus*. *Godb.* 291.

So in Debt upon a joint Contract, if one pleads *Nil debet*, the other ſhall not wage his Law. *R. Cro. El.* 646.

If the Defendant comes to wage his Law, the Court examines every Point of the Declaration. 3 *Leo.* 212.

And if it appears that the Defendant is indebted, tho' it was agreed to be allow'd out of a Debt due to him from the Plaintiff, he cannot ſafely wage his Law. *Per* 2 *J.* 3 *Leo.* 212.

And he muſt have Compurgators, which are uſually eleven, and ſwear *de Credulitate*. 2 *Vent.* 171. 2 *Inſt.* 45.

But they may be a leſs Number than eleven. 2 *Vent.* 171.

And with the Plaintiff's Conſent the Oath of the Compurgators may be omitted. 1 *Vent.* 4.

And when the Defendant has his Hand upon the Book, the Plaintiff may be nonſuited. 2 *Vent.* 171.

(2 W. 46.) An Obligation for the ſame Debt.

So, to Debt upon a Contract, the Defendant may plead a Bond given for the ſame Debt; for this determines the Contract. 2 *Cro.* 33. *Cro. Car.* 415. *Vide Ante*, (2 G. 12.)

So, to Debt upon a Bond againſt the Heir, he may plead a Bond by the Executor, or Adminiſtrator, in Satisfaction of the ſame Bond. *Vide Ante*, (2 E. 3.)

To Debt by Bill, by the *St.* 4 & 5 *An.* 16. he may plead Payment generally.

But he cannot plead, *another Bond given in Satisfaction*, to Debt upon Bond. *R.* 3 *Lev.* 55. 1 *Mod.* 225. *R. Lit.* 58. *R.* 1 *Brownl.* 47, 71. *Vide Ante*, (2 W. 30.)

Nor an Agreement to accept a Bond of the Executor or Adminiſtrator, and a Bond given accordingly, to Debt upon a Bond by the Teſtator, *&c.* *R.* 3 *Lev.* 56. *Cont. per* 3 *J.* 2 *Mod.* 137.

Nor an Agreement by *Parol* to give a longer Day of Payment. *R. Mo.* 573. *Cro. El.* 697.

Nor Words by the Plaintiff, which hindred the Marriage the Defendant undertook to procure, without ſhewing that the Defendant did his Endeavour. *R. Cro. El.* 694.

But in Debt upon a Contract, Defendant cannot traverſe the Contract; for this amounts to *Nil debet*; and therefore he cannot ſay that the Contract was for a leſs Sum, or another Thing, *&c.* *R. Dal.* 49.

(2 W. 47.) Upon a Demiſe. *Nil debet.*

To Debt for Rent upon a Demiſe, the Defendant may plead *Nil debet*. *Win. Ent.* 225.

Or, *Levy by Diſtreſs*. *Dy.* 20. *b.* 1 *Ed.* 4. 3. *b.* *Vide Ante*, 2 (V. 14.)

And upon *Levy by Diſtreſs et ſic nil debet*, if the Iſſue is upon the *Nil debet*, a Releaſe, Payment, *&c.* which proves Nothing due, will be allowed in Evidence. *Per Holt.* 1 *Sal.* 284.

(2 W 48.) *Nil habet in Tenementis*, or *Non demiſit*.

If the Demiſe be by Deed-Poll, or by *Parol*, the Defendant may plead *Nil habet in Tenementis*. *Co. Lit.* 47. *b.* 2 *Vent.* 251. *Tho. Ent.* 153.

Or may plead *Non demiſit*, and give the other Matter in Evidence. *Co. Lit.* 47. *b.*

Or, if the Plaintiff demiſed by *Parol*, he may give in Evidence upon *Nil debet*, *Quod nil habuit*, *&c.* 4 *Mod.* 254. *Per Holt.* 13 *W.* 3. (*Vide* 1 *Ld. Ray.* 746.)

Or if the Demiſe is by Writing, if the Plaintiff was not in Poſſeſſion. *Per Holt.* 13 *W.* 3. *Vide* 1 *Ld. Ray.* 746.)

But he cannot plead *Nil habet in Tenementis*, or *Non demiſit*, if the Demiſe is by Indenture. *Co. Lit.* 47. *b.* *R.* 3 *Lev.* 146.

Nor traverſe the Demiſe. *R.* 2 *Cro.* 73.

Nor can he plead *Nil debet* to Part, and *Nil habet in Tenementis* to other Part; for this will be double. *R.* 4 *Mod.* 254.

[*Nil habuit in Tenementis*, is a bad Plea to *Aſſumpſit*, for the Uſe and Occupation in Lands; and in Debt for Rent on Deed-Poll, it muſt be, Plaintiff had Nothing at the Time of Action, or at any other Time. *Lewis* v. *Willis*, *H.* 25 *G.* 2. 1 *Wilſ.* 314.]

If the Defendant pleads *Nil habet* to Debt for Rent upon a Leaſe by Indenture, the Plaintiff may demur; for the *Eſtoppel* appears upon the Record. *R.* 1 *Sal.* 277. *R.* 3 *Lev.* 146.

Otherwiſe, if the *Eſtoppel* does not appear; for he ought by Replication to ſhew the *Eſtoppel*, and rely thereon. *R.* 1 *Sal.* 277.

If two Demiſes are alledged, *Tempore Demiſſionum prædict' Nil habuit*, is bad; for he ought to plead diſtinctly to each Demiſe. *R.* 2 *Vent.* 253, 271. 4 *Mod.* 76. *Skin.* 307.

So in Covenant for Payment of Rent-Arrear, the Defendant cannot plead *Nil habet in Tenementis.* 2 *Vent.* 69.

The Plaintiff replied that *A.* ſeiſed in Fee by Fine conveyed to him. *Tho. Ent.* 153.

The Plaintiff by his Replication to *Nil habet*, *&c.* ought to ſhew what Eſtate he has; for it is not ſufficient to ſay generally, that he has a good Title or Eſtate. *R.* 3 *Lev.* 193. *R.* 2 *Cro.* 312. *Yel.* 227. 2 *Bul.* 41. *Adm. per C. B. M.* 6 *Geo.*

So in Covenant for Non-payment of Rent, if the Defendant pleads *Nil habet*, *&c.* *R.* 3 *Lev.* 193.

But it ſhall be aided after Verdict. *R.* 2 *Cro.* 312. 1 *Mod.* 292. *R. Yel.* 227.

And, ſince, it has been reſolved and affirmed in Error, that a general Replication that *A.* having Title, leaſed to the Plaintiff, without ſhewing what Title *A.* had, is ſufficient. 2 *Vent.* 252, 271. 4 *Mod.* 78. *R. in C. B. H.* 6 *Geo.*

[If in Debt for Rent againſt Defendant as Aſſignee of a Term, he pleads he has made a further Aſſignment before the Time for which the Rent is demanded, and Plaintiff replies *non aſſignavit*, he cannot give Fraud in Evidence. *Lekeux* v. *Naſh*, *H.* 18 *G.* 2. *Str.* 1221.]

(2. W. 49) Tender.

So the Defendant may plead a Tender of the Rent at the Day, and always ready. 2 *Mod. Int.* 236. *Lut.* 367. *Vide Ante.* (2 W. 28.)

But if he does not plead a Tender upon the Land at the laſt Hour before Sun-Set, *&c.* it is bad. *R.* 2 *Cro.* 423.

Yet a Tender afterwards to the Perſon, and Refuſal, ſupplies the Want of Tender at the laſt Hour, *&c.* *R. Lut.* 593.

So he need not ſay preciſely how long before the Setting, if he was there before, and ſtaid after. *R.* 2 *Cro.* 499.

So, if he ſays that he was ready to pay from Sun-Riſe till Sun-Set, it is ſufficient, without ſaying *quod obtulit*. *R. Ray.* 419.

(2 W. 50.) Entry and Expulſion.

So the Defendant may plead an Entry by the Leſſor, and Expulſion of the Defendant. 1 *Sand.* 203. 2 *Mod. Int.* 235.

So Eviction by a Stranger. 2 *Vent.* 68.

So an Extent or Taking in Execution upon an *Elegit* againſt the Leſſor before the Rent became due. *R. Cro. El.* 398.

So

So to Debt upon a Leaſe at Will *quod non occupavit*. *Per Fitzh. Dy.* 14. *a.*

But Expulſion or Eviction will be a Plea only as to Rent incurred afterwards. 2 *Vent.* 68.

And therefore where the Plaintiff alledges Enjoyment, if the Defendant pleads Eviction, he muſt traverſe the Enjoyment. *R.* 2 *Vent.* 68.

So, it is no Plea in Debt for Rent upon a Leaſe for Years, *quod non habuit aut occupavit*. *R. Dy.* 14. *a.*

[In Debt for Rent, that *A.* a Stranger, before Rent due, entered and turned Defendant out of Poſſeſſion, and ſtill keeps him out, and that *A.* at the Time of his Entry was, and now is ſeized in Fee, is not a good Plea; he muſt ſhew a higher Title. *Cooper* v. *Young*, *T.* 5 & 6 *G.* 2. *Fort.* 360.]

[That *A.* at the Time of the Leaſe was, and is ſeized in Fee, is bad; for it muſt be pleaded as prior. *Cooper* v. *Young*, *P.* 8 *G.* 2. *Fort.* 360.]

[That *A.* having a prior and better Title, evicted Defendant, is not ſufficient; Defendant muſt ſhew what Evictor's Title was. *Jordan.* v. *Twells*, *M.* 9 *G.* 2. *B. R. H.* 171.]

[Defendant muſt ſhew, that Evictor had a Title to enter. *Ibid.*]

[Muſt ſhew by what Proceſs he was evicted. *Ibid.*]

(2 W. 51.) Judgment in Debt.

If the Plaintiff declares in Debt upon a Contract for Delivery of Goods; the Judgment ſhall be conditional, as in Detinue, *viz. ſo much Corn, &c. or the Value*. *R.* 11 *H.* 7. 5. *b.* *Vide Ante*, (Z. 1.)

So, if the Declaration is for 40 Pieces *Monet' forinſecæ ad Val'* 40 *l.* the Judgment ſhall not be for the Debt, but for ſo many Pieces, and there ſhall be a Writ of Inquiry as to the Value. *R. Cro. El.* 536.

[In Debt on Bond, where a Set-off is pleaded, tho' Judgment ſhall be entered for no more than ſhall appear to be due to Plaintiff after the Set-off, yet the Penalty remains a Security againſt future Breaches. *Collins* v. *Collins*, *T.* 32 & 33 *G.* 2. 2 *B. M.* 820.]

(2 X) Pleading in Detinue.

(2 X. 1.) Proceſs.

DETINUE may be ſued in the County by *Juſticies*, as well as Debt. *F.N.B.* 138. *B.* *Vide Ante*, (2 W. 1.)

Or may be ſued in *C. B.*

And upon the Pretence of Privilege in *B. R.* (in all Caſes except in Detinue for Charters, which concern the Freehold, which ſhall be only in *C. B.*) 4 *Inſt.* 71. *F. N. B.* 138. *C.*

But if Detinue for Charters is brought in any other Court than *C. B.* a *Superſedeas* lies. *F. N. B.* 138. *C.*

When Detinue lies, *Vide Detinue*, (A.)

When Detinue for Charters, *Vide Charters*, (B. 1.)

The Proceſs in Detinue is Summons, Attachment, and Diſtreſs. *F. N. B.* 138. *B.* 139. *A.*

And by the *St.* 25 *Ed.* 3. 17. In Detinue for Chattels, the ſame Proceſs as in Account; and therefore Proceſs goes to Outlawry.

But in Detinue for Charters, which concern the Realty, no Proceſs runs to Outlawry. 44 *Ed.* 3. 41. *b.* *Co. Lit.* 286. *b.* *Dy.* 223. *a.*

(2 X. 2.) Declaration.

The Declaration in Detinue ſhall be grounded upon Bailment, or upon *devenerunt ad Manus*. *Co. Lit.* 286. *b.*

The Declaration muſt deſcribe the Goods demanded ſo certainly that they may be known, to be delivered to him in *Specie*. *Co. Lit.* 286. *b.*

And therefore Detinue for Money at large is not good; for it cannot be known. *Co. Lit.* 286. *b.* *R. Cro, El.* 457. 1 *Rol.* 606. *l.* 20.

Nor for Corn out of a Sack or Bag. *Co. Lit.* 286. *b.*

So he muſt ſhew the Value of each Particular by itſelf, and not of all together. 2 *Rol.* 96. *Vide infra.*

But it lies for Money in a Bag not ſealed. 1 *Rol.* 606. *l.* 12, 14.

Or for Money not in a Bag, if it is taken in Sight of another. *R.* 1 *Rol.* 606. *l.* 16.

Or for a particular Piece of Gold, or for ſo many Ounces. *R.* 1 *Rol.* 606. *l.* 25. *Yel.* 81.

Or for twenty Quarters of Barley or Wheat. *Bro. Detinue* 51.

The Declaration may mention the Value of every Particular, or of all in Groſs. *Bro. Detin.* 4, 48. *R.* 1. 3. 3. *Vide ſupra.*

(2 X. 3.) Pleas in Detinue.

(2 X. 3). *Nil detinet.*

To an Action of Detinue the Defendant may plead *Nil detinet*.

(2 X. 4.) Wager of Law.

So in Detinue, generally he may wage his Law. *Co. Lit.* 295. *a.* *Vide Ante*, 2 W. 45.)

Tho' it be upon Bailment by another Hand, for by whom bailed is not traverſable. *Co. Lit.* 295. *a.*

So where he has a Right to the Deed, tho' he has it in his Cuſtody. *R. Dal.* 106.

So in Detinue of Charters, or a Box of Charters, without ſhewing any Charter in certain. *R.* 19 *H.* 6. 9. *b.*

But in Detinue of Charters he cannot wage his Law. *Co. Lit.* 295. *a.*

If he ſhews any Charter in certain. 19 *H.* 6. 9. *b.*

Tho' it be for an Indenture of Demiſe for Years. *Co. Lit.* 295. *a.*

(2 X. 5.) *Uncore priſt.*

So he may plead *Uncore priſt*. 1 *Bro. Ent.* 149.

(2 X. 6.) Delivery to him to whoſe Uſe, &c.

So he may plead Delivery to *A.* to whoſe Uſe they were bailed. Tho' the Delivery was after the Action brought. *F. N. B.* 138. *M.*

(2 X. 7.) Releaſe.

So a Releaſe after Bailment by the Huſband of the Plaintiff. *R. Dal.* 30.

(2 X. 8.) Garniſhment, when allowed.

So the Defendant may plead, that the Goods were delivered to him by the Plaintiff, and *A. æquâ Manu* upon a Condition which he knew not was performed, and pray that *A.* be garniſhed. *Sav.* 29.

And it will be good without ſaying what was the Condition. 1 *Rol.* 733. *l.* 4.

So, if both bring ſeveral Detinues for the ſame Goods, the Defendant may plead to both, that they were delivered upon Condition, &c. and pray that the Plaintiffs may interplead. 1 *Rol.* 734. *l.* 10.

Tho' one declares upon Bailment, the other upon Trover. 1 *Rol.* 733. *l.* 40.

Whether the Delivery were joint or ſeveral. 1 *Rol.* 733. *l.* 50.

Tho' the Delivery was by a Corporation and others, and the Defendant is one of the Corporation. 1 *Rol.* 732. *l.* 15.

So, if *A.* bails Goods of *C.* to *B.* in Detinue by *C.* againſt *B.* he may plead Bailment by *A.* to be redelivered to him, and pray that he may be garniſhed. *Mod. Ca.* 216.

If the Defendant prays Garniſhment, he ought to proffer the Goods in Court.

And the Goods anciently remained in Court till the Plea determined, but now they remain with the Defendant till Trial. 1 *Rol.* 736. *l.* 5.

And the Defendant cannot afterwards deliver them to either Party without the Award of the Court. 1 *Rol.* 736. *l.* 15.

Nor

Nor can he plead any Plea afterwards; for he is out of Court, except for the Delivery of the Goods, and therefore not demandable till Judgment, when he muſt deliver them. 1 *Rol.* 736. *l.* 25.

But the Court may require Sureties of the Defendant for the Goods. 1 *Rol.* 736. *l.* 10.

(2 X. 9.) Proceſs againſt Garniſhment.

After Prayer of Garniſhment a *Scire facias* goes againſt the Garniſhee. 19 *H.* 6. 9. *b.*

And a *Scire facias* ought to be awarded.

If a *Scire facias* goes againſt two Garniſhees, and one is returned, ſerved, and and the other, dead, another *Scire facias* goes againſt the Executors of the Deceaſed, and *idem Dies* ſhall be given to him, who was ſerved and appeared. *R.* 19 *H.* 6. 9. *b.* 55. *b.*

If the Garniſhee appears, he may imparl.

If the Plaintiffs interplead, they ought to do it in proper Perſon. 1 *Rol.* 734. *l.* 20.

The Interpleading ſhall be upon the Original of the oldeſt Date. 1 *Rol.* 735. *l.* 45.

Tho' the other counted firſt. 1 *Rol.* 735. *l.* 45.

But, if both Originals are of the ſame Date, it ſhall be upon that whereon there is the firſt Count. 1 *Rol.* 735, *l.* 53.

Or the Court may aſſign upon which the Interpleader ſhall be. 1 *Rol.* 36. *l.* 2.

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(2 X. 10.) Pleas by him.

A Garniſhee can regularly plead Nothing except Conditions performed. 1 *Rol.* 732. *l.* 35.

Or a Releaſe from the Plaintiff. 1 *Rol.* 733. *l.* 15.

But the Garniſhee cannot plead that he himſelf alone delivered. 1 *Rol.* 732. *l.* 50.

That the Delivery was to the Defendant and a Stranger. 1 *Rol.* 733. *l.* 2.

Or upon other Conditions than the Defendant has mentioned; for if the Defendant miſtakes the Conditions, he will be charged by Oath, and therefore the Garniſhee has no Miſchief. 1 *Rol.* 732. *l.* 50.

But if the Defendant does not mention the Conditions, the Garniſhee may, and the Plaintiff may alledge other Conditions, and traverſe thoſe mentioned by the Garniſhee. 1 *Rol.* 733. *l.* 5.

So the Garniſhee cannot plead Bailment in another County. 1 *Rol.* 733. *l.* 7.

Or an Agreement by the Plaintiff that he ſhould have the Goods upon a Condition, which he has performed. 1 *Rol.* 733. *l.* 10.

Or Performance of the Condition in the Bond, for which Detinue is brought. 1 *Rol.* 732. *l.* 37.

So in Detinue of a Deed the Garniſhee ſhall not plead a Bar to the Original Deed: As, *Non eſt Factum*, within Age, *&c.* 1 *Rol.* 733. *l.* 25.

(2 X. 11.) When Garniſhment not allowed.

But Garniſhment ſhall not be allowed if the Defendant acknowledges the Action of one Plaintiff, though the Plaintiff in another Action prays it; for it ſhall be granted only at the Requeſt of the Defendant, being for his Safety. 1 *Rol.* 734. *l.* 10.

So, it will be a good Counterplea of the Garniſhment, if the Plaintiff ſays the Delivery was by him alone. 1 *Rol.* 732. *l.* 30.

So, if there are two *Detinues*, the Defendant cannot pray an Interpleader, if both are not returnable the ſame Day. 1 *Rol.* 734. *l.* 18.

So, if one demands Charters upon Bailment, the other upon Title. 1 *Rol.* 734. *l.* 40.

(2 X. 12.) Judgment in Detinue.

The Judgment againſt the Defendant in Detinue ſhall be for Recovery of the Thing detained, *vel Valorem inde*, and Coſts. *Per Frowick, Kelw.* 64. *b.*

And if Judgment be upon Confeſſion, *Non ſum informatus*, Demurrer, *&c.* a Writ of Inquiry ſhall be awarded to inquire of the Value. *Vide Ante*, (Z. 1.)

And after Judgment, if a *Diſtringas* goes *ad deliberandum Bona*, and the Defendant does not, the Plaintiff ſhall have Damages taxed by the Inqueſt, ſo that it lies in the Defendant's Election to deliver the Goods, or the Value. *Per Frowick, Kelw.* 64. *b.*

So after Judgment againſt the Defendant, the Plaintiff may have a *Diſtringas*, or a *Scire facias* againſt the Defendant for the Thing detained. 1 *Rol.* 737. *l.* 35.

If Detinue be for Charters, the Verdict muſt find ſome Damages, which the Plaintiff ſhall recover, if the Charters are loſt. *Semb. Sav.* 29.

If the Plaintiff recovers after Interpleader by the Garniſhee, there ſhall be Judgment againſt the Defendant for Recovery of the Thing detained. 1 *Rol.* 736. *l.* 46.

And there may be a *Scire facias* or *Diſtringas* for it againſt the Defendant. 1 *Rol.* 737. *l.* 35.

So the Plaintiff may recover Damages againſt the Garniſhee for Delay after the Writ purchaſed. 1 *Rol.* 737. *l.* 21.

Tho' the Recovery is upon a Demurrer or Default, as well as upon a Verdict. 1 *Rol.* 737. *l.* 10.

And he may recover more Damages than are alledged in the Declaration; for it was not againſt him. 1 *Rol.* 737. *l.* 25.

But if the Garniſhee does not appear after *Scire feci* returned againſt him, the Plaintiff ſhall not recover Damages againſt him. 1 *Rol.* 733. *l.* 35.

So, if the Garniſhee appears, and the Plaintiff and Defendant both make Default, there ſhall be Judgment for the Garniſhee. 1 *Rol.* 733. *l.* 30.

(2 Y) Pleading in Dower, Dower unde Nihil habet.

(2 Y. 1.) The Proceſs.

DOWER may be recovered by Writ of Dower *unde Nihil habet*, or by *Right of Dower*. *F.N.B.* 148. *A.*

Writ of Right in Dower. *Vide Reg.* 3. *a.*

Dower *unde Nihil habet*. *Reg.* 170. *a.*

Writ of Dower *unde Nihil habet* lies only againſt the Tenant of the Freehold, or Guardian in *Chivalry*. *F.N.B.* 148. *A.*

And ſhall be ſued in *C. B.* or in the County by *Juſticies*. *F.N.B.* 148. *A.*

Or upon a ſpecial Cuſtom by Plaint. *Dub.* 1 *Vent.* 267. *Ray* 233.

But it ſhall not be ſued by Plaint without a ſpecial Cuſtom. *R.* 1 *Vent.* 267. *Ray.* 233.

The Proceſs in *C. B.* is Summons, *Grand* and *Petit Cape*. *F.N.B.* 148.

By Cuſtom there ſhall be a Reſummons. 2 *Sand.* 43.

And in the *Huſtings* in *London* there are three Summonſes. *Co. Ent.* 176. *b.*

At the Return of the Summons, the Defendant may caſt an Eſſoin.

By the *St.* 51 *H.* 3. *of Return in Dower*. 32 *H.*8. 21. *and* 16 *Car.* 6. The Writ of Dower *unde Nihil habet* coming in, and being returnable on any common Return Day, there ſhall be Day given in it till the fifth common Return Day next enſuing incluſive.

If the Tenant caſts an Eſſoin at the Return of the Summons, it muſt be entred upon the Eſſoin-Day of the ſame Return.

And if no Eſſoin be then entred, upon the Day of Exceptions the Demandant may enter a *Ne recipiatur*. *(Vide Comp. Att.* 72, 196. *Edit.* 1695.)

There are five Eſſoins; 1. *De Servitio Regis*. 2. *In Terra Sancta*. 3 *Ultra Mare*. 4. *De malo Lecti*. 5. *De malo veniendi*, which is called the common Eſſoin. 2 *Inſt.* 125.

By the Common Law He, who caſts an Eſſoin, muſt ſwear the Cauſe to be true. 2 *Inſt.* 137.

But by the *St. Marl.* 52 *H.* 3. 19. He need not as to a common Eſſoin, (for the general Words of the Statute are reſtrained to this.) 2 *Inſt.* 137.

And by the *St. of Eſſoins*, 12 *Ed.* 2. *Eſſoin de Servitio Regis* is ouſted in Dower.

If any Eſſoin is caſt, except the common Eſſoin, the Demandant will be delayed for a Year and a Day. 2 *Inſt.* 137.

If the common Eſſoin is caſt, the Demandant muſt adjourn the Eſſoin to the fifth Return after. *(Vide Com. Att.* 204.*)*

At the Return of the Summons, or, if an Eſſoin is caſt, at the Day given by the Adjournment of the Eſſoin, if the Tenant does not appear, a *Grand Cape* iſſues. *(Vide Com. Att.* 203, 204.*)*

[Proclamation muſt be made 14 Days before the Return of the Summons, or the *Grand Cape* ſhall be ſet aſide. *Freeman* v. *Canham*, *C. B. P.* 8 *G.* 2. *Barnes* 1.]

And if *Nulla Tenementa*, *&c.* be returned, a *Teſtatum Grand Cape*.

So, if the Sheriff does not return his Writ, an *alias Grand Cape* ſhall be awarded at the Return of the *Grand Cape*; if the Tenant alledges that he was not able to come, it does not ſave his Default. *R.* 3 *Leo.* 2.

But, if no Summons is returned, a *Grand Cape* cannot iſſue. *Noy* 22.

If the Tenant appears upon the *Grand Cape*, he may wage his Law of *Non Summons*. *Co. Ent.* 175. *b.*

And he ſhall have Day in the ſame or the next Term for 15 Days at leaſt to wage his Law. *(Vide Comp. Att.* 72.*)*

If he does not wage his Law, there ſhall be final Judgment againſt him.

If he wages his Law, and the Demandant holds to the Default of the Tenant, the Writ ſhall abate. *(Vide Comp. Att.* 204.*)*

So, if the Demandant holds to the Default, and the Tenant is an Infant, who cannot wage his Law of *Non Summons*.

But when the Tenant wages his Law of *Non Summons*, the Demandant may releaſe the Default. *Co. Ent.* 176. *a.* 1 *Bro. Ent.* 203.

(2 Y. 2.) Count in Dower.

If the Tenant appears upon the Summons, or the Adjournment of the Eſſoin, or if he appears at the Return of the *Grand Cape*, and the Demandant releaſes the Default, the Demandant ſhall count. *Co. Ent.* 171. *a.* 176. *a.*

The Count ſhall be of the third Part of ſuch a Meſſuage, *&c.* for if it be of three Meſſuages, *&c.* where there are ſeveral, and three is the third Part of all, it is bad. 3 *Lev.* 169.

But it may be amended. *Per* 2 *J. Lev. cont.* 3 *Lev.* 169.

If Dower is demanded of Lands of the Nature of *Gavelkind*, it muſt be of a Moiety *dum ſola et caſta*; and if the Plaintiff demands a third Part, it is a good Bar that the Land is *Gavelkind*. *R.* 1 *Leo.* 133.

It muſt deſcribe the Lands ſo certainly, that Seiſin may be delivered by the Sheriff and therefore of a third Part of three Tenements is bad. *R.* 2 *Mod. Ca.* 355.

If the Plaintiff is not named, *quæ fuit Uxor B.* in the firſt Part of the Writ, it is bad; tho' afterwards the Lands demanded are called *Terras B. quondam Viri ſui*. *R.* 2 *Gro.* 217.

(2 Y. 3.) View.

When the Demandant has counted, the Tenant may demand a View of the Lands demanded. *Co. Ent.* 177. *a.* 47 *Ed.* 3. 6. *a.*

Or, if Dower is demanded of a Rent, of the Land out of which it iſſues.

And

And a View ſhall be granted in Dower *unde Nihil habet*, as well as in Right of Dower. *Cont. Dy.* 179. *a. Cont.* 2 *Inſt.* 481. 45 *Ed.* 3. 17. *a. Acc. Raſt. Ent.* 231. *a. Aſh. Ent.* 292. *Clift* 299. *Semb. Cont. per C. B. M.* 9 *An.*

And it may be demanded after a general Imparlance, tho' it is ſafer to demand it before. *Dy.* 210. *b.*

But by the *St. W.* 2. 13 *Ed.* 1. 48. In Dower, the Tenant ſhall not have a View, if the Husband of the Demandant aliened to the Tenant himſelf. 2 *Inſt.* 481. 3 *Lev.* 169. *Vide View.*

So, if the Huſband died ſeiſed of the Land. 2 *Inſt.* 481. 3 *Lev.* 169.

If a prior Writ of the Demandant abated by a Plea, which aroſe upon the View. 2 *Inſt.* 480.

If Dower is demanded of Tithes. *R.* 2 *Rol.* 728. *l.* 45.

Or of a Thing certain: As, of the *Marſhalſea.* 2 *Rol.* 728. *l.* 25.

If the Tenant demands a View, when it is not allowable, the Demandant may counterplead: As, if the Demandant's Huſband died ſeiſed. *Clift* 299. *Raſt.* 231. *b.* 3 *Lev.* 168.

If the Huſband aliened to the Tenant. 3 *Lev.* 220.

And it is ſufficient to ſay *Alienavit.* *R.* 3 *Lev.* 220.

The Counterplea prays that the View may be excluded, but if it demands Dower, it is not bad. *R.* 3 *Lev.* 169.

So the Demandant in the Counterplea of the View may ſay, that the Tenant entred, and continued the Poſſeſſion. *Aſh. Ent.* 296.

And upon the Counterplea Iſſue may be taken. 34 *H.* 6. 10. *b. Raſt.* 231. *b.*

If the Tenant demurs to the Counterplea, and it is adjudged againſt him, it will be Peremptory.

After the Return of the Writ for a View, the Tenant may have the common Eſſoin.

So the Attorney of the Tenant may be eſſoined. *Co. Ent.* 177. *a.*

And at the Return of the View, or at the Adjournment of the Eſſoin, the Demandant ſhall count *de Novo.* (*Vide Com. Att.* 204.)

If after a View the Tenant pleads in Abatement to Part, the Demandant may abridge his Demand. *Vide Abridgment*, (A. 1.)

So tho' the Tenant does not plead in Abatement. *Lev. Ent.* 76. 2 *Sand.* 330.

What Pleas may be after a View. *Vide Abatement*, (I. 25.)

(2 Y 4.) Pleas in Dower.

(2 Y. 4.) In Abatement. *Vide Abatement.*

To a Demand of Dower the Tenant may plead in Abatement: As, *Antient Demeſne. Aſh. Ent.* 297.

That the Demandant *took Husband pending the Writ. Co. Ent.* 173. *b.*

That her Husband was Attaint. 1 *Leo.* 3.

Non-tenure. 1 *Bro. Ent.* 205. *Raſt. Ent.* 225. *a. Mo.* 80. *Dal.* 100.

Or *Non-tenure of Part. Lut.* 716.

So the Tenant may plead in Abatement, *that he holds jointly with A. not named. Raſt. Ent.* 225. *b.*

That the Land is Gavelkind; ſo that a Moiety ought to be demanded, when the Declaration demands only a third Part. *R. to be a Plea in Bar. Sav.* 91.

(2 Y. 5.) In Bar. *Touts Temps priſt.*

So the Tenant may plead in Excuſe of himſelf, or in Bar of the Dower: As, he may confeſs the Demand, and ſay *Touts Temps priſt.* 1 *Bro. Ent.* 205. *Co. Lit.* 32. *b.*

And if the Tenant pleads *Touts Temps priſt* the firſt Day of the Return of the Summons, he ſhall be excuſed from Damages. *Co. Lit.* 32. *b.*

So he may plead that the Demandant abated, and was in by Abatement till ſuch a Day, and afterwards *Touts Temps priſt. Lut.* 715. *Dal.* 100.

Upon this Plea the Demandant may have Judgment immediately, but ſhall loſe her Damages and *Meſne* Profits. *Co. Lit.* 32. *b.* 1 *Bro. Ent.* 205.

Or, if ſhe had demanded her Dower, ſhe may plead the Demand. *Co. Lit.* 32. *b. Lut.* 717.

Tho'

Tho' the Demand was by Requeſt *in Pais*. *Co. Lit.* 32. *b.*

If the Defendant pleads *Touts Temps priſt*, and there is Judgment; tho' Damages are given, it is no Error, for perhaps there was Delay. 2 *Mod. Ca.* 25.

So the Heir may plead Detainment of Charters, and always ready, *ſi, &c.* *Raſt. Ent.* 224. *b.* *Mo.* 81. (2 Y. 6.) Detainment of Charters.

So Detinue of Charters as to Parcel. *Dal.* 100.

So a Guardian in *Chivalry*, in Dower againſt him, may plead Detainment of his Ward. *Hob.* 199.

But a Guardian cannot plead Detainer of Charters; for they do not belong to him. *Co. Lit.* 39.

Nor the Heir after Imparlance. *R. Sho.* 271. 1 *Sal.* 252.

To this Plea the Demandant may reply *Non detinet*. *Raſt.* 224. *b.* *Mo.* 81. Replication.

Or that ſhe is ready to deliver, and thereupon there ſhall be Judgment for her immediately. *Raſt. Ent.* 224. *b.* *Hob.* 199.

But if a Woman replies *Quod non detinet*, and it is found againſt her, it will be a Bar of Dower. *Hob.* 199.

Ne unques ſeiſie que Dower. *Co. Ent.* 176. *a.* *Clift* 303. (2 Y. 7.) *Ne unques ſeiſie, &c.*

Or *Ne unques ſeiſie* as to Part, with another Bar to the Reſidue. *Clift* 303.

That the Demandant was under Age dowable. 1 *Bro. Ent.* 204. *Co. Lit.* 33. *a.* (2 Y. 8.) Within Age dowable.

To which the Demandant replies, that ſhe was of the Age of nine Years and an half. 1 *Bro. Ent.* 204. Replication.

So the Tenant may plead that the Husband of the Demandant is alive, 1 *Bro. Ent.* 205. *Bend. pl.* 131. *R.* 1 *And.* 20. (2 Y. 9.) Husband alive, Replication.

To this Plea the Demandant replies, that her Huſband is dead, and thereon a Day is given for Proof of his Death, which muſt be made in Court by two Witneſſes at leaſt. *Bend. pl.* 131. *Dy.* 185. *a.*

And at the ſame Day the Tenant may examine his Witneſſes that the Huſband is alive. *Bend. pl.* 131. *Dy.* 185. *a.* *Mo.* 14.

And if it appears to the Court by Witneſſes that the Husband is dead, the Demandant ſhall have Judgment immediately. *Bend. pl.* 131.

So, if the Proof of the Death is not direct, if there is no Proof of his being alive. *R.* 1 *And.* 20. *Mo.* 14.

So the Tenant may plead *Ne unques accouple* in lawful Matrimony. *Co. Ent.* 180. *a.* (2 Y. 10.) *Ne unques accouple.*

And the Demandant replies, that at *B.* in ſuch a Dioceſe ſhe was accoupled in lawful Matrimony. *Co. Ent.* 180. *b.* Replication.

[If Plaintiff replies a Sentence in the Spiritual Court, in a Suit by a third Perſon againſt her for Adultery, in which the Deceaſed was no Party, decreeing that ſhe was the Wife of the Deceaſed, it is bad; for there can be no Trial but by the Biſhop's Certificate; and beſides, this Sentence is only Evidence, and therefore cannot be replied. And this is the General Iſſue, to which no new Matter can be replied; and there muſt be ſuch a Replication as will join the Iſſue, and awarding the Writ to the Biſhop is the Iſſue. *Robins, vid.* v. *Crutchley, P.* 33 *G.* 2. *T.* 33 & 34 *G.* 2. 2 *Wilſ.* 118, 122, 127.]

If this Plea is in *London*, or other inferior Court, it ſhall be removed to *C. B.* by *Mittimus*; for no one except *B. R.* or *C. B.* or Juſtices of Gaol Delivery, *&c.* can write to the Biſhop for his Certificate. *Co. Lit.* 134. *a.* *Co. Ent.* 180. *b.* *Vide Baſtard*, (D. 2.)

Upon this Plea a Writ goes to the Biſhop to certify. *Co. Ent.* 181. *a.* 1 *Bro. Ent.* 204.

The Plaintiff has the Carriage of the Writ, and if there be a Default in him, the Defendant ſhall not have it without Notice to the Plaintiff, or Motion. *R.* 2 *Jon.* 38.

[The Biſhop muſt return the Fact, and not the Evidence. *Eaſterby* v. *Eaſterby*. *C. B. M.* 7 *G.* 2. *Barnes* 1.]

The Anſwer of the Biſhop ought to be poſitive; for he is Judge of it. *Dy.* 368. *b.*

And therefore he cannot return the Special Matter. *R. Dy.* 305. *b.*

And tho' he returns ſpecial Matter, and concludes *Et ſic legitimo Matrimonio copulati fuerunt*, it is not good. *R. Dy.* 313. 2 *Rol.* 591. *l.* 10.

If the Biſhop refuſes a good Certificate, he may be amerced. *Dy.* 305. *b.*

And it is no Anſwer to ſay, he was inhibited by the *Arches*. 2 *Rol.* 592. *l.* 10.

Yet a Certificate, that ſhe was accoupled *in vero ſed clandeſtino Matrimonio*, is good. *R.* 2 *Rol.* 591. *l.* 25.

That he finds by good Proof that ſhe was accoupled. 2 *Rol.* 591. *l.* 20. *Dy.* 368, 9.

If the Certificate is inſufficient, a new Writ goes to the Biſhop. *Townſ. Jud.* 96.

(2 Y. 11.) Elopement. So the Tenant may plead an Elopement by the Wife during Coverture. *Co. Lit.* 32. 1 *Bro. Ent.* 204. *Dy.* 107. *a.*

Replication. To which the Demandant replies, *that ſhe did not elope.* 2 *Bro. Ent.* 109.

That ſhe was afterwards reconciled to her Husband. 1 *Bro. Ent.* 204. *Co. Lit.* 32. *b.* *Dy.* 107. *a.*

And if the Iſſue is upon the Reconciliation, it is ſufficient if the Huſband lies ſeveral Nights with his Wife, tho' ſhe afterwards continues in Adultery; for there may be ſeveral Elopements. *Dy.* 107. *a.*

(2 Y. 12.)] Divorce. So the Tenant may plead a Divorce *a Vinculo Matrimonii.*

(2 Y. 13.) Jointure. So the Tenant may plead that the Demandant had a Jointure. *Co. Ent.* 171. *b.* 172.

A Jointure after Coverture, to which the Wife agreed after her Husband's Death.

And it is ſufficient to plead a Jointure generally, without ſaying that ſhe agreed; for it ſhall be intended, till it is alledged on the other Side, that ſhe refuſed. *Per* 2 *J. Warb. cont. Hob.* 71, 104.

Replication. The Demandant may reply, that the Eſtate was not made to ſuch Uſes. *Co. Ent.* 172. *b.*

That it was not for a Jointure. Co. Ent. 172. *a.*

And a Deviſe, if it is not expreſſly made for a Jointure, cannot be averred to be a Jointure. *Mo.* 31. *Vide Dower*, (E. 1.)

(2 Y. 14.) Fine or Recovery. That the Husband levied a Fine, and the Demandant made no Claim within five Years. *Co. Ent.* 171. *a.* *Dal.* 107. *Clift* 305.

That Husband and Wife levied a Fine.

Or ſuffered a Common Recovery.

Replication. The Demandant by Replication may ſay that ſhe ſued for her Dower within five Years. *Co. Ent.* 171. *b.*

So a Fine by Husband and Wife, *come ceo that he has of the Gift of the Husband*, of Lands limited for a Jointure *after* Marriage, does not bar her of Dower; for her Election does not come till her Husband's Death. 1 *Leo.* 285.

(2 Y. 15.) Aſſignment of Dower. *That Lands were aſſigned for Dower by the Heir. R. Mo.* 26.

Or, *by himſelf* who was Aſſignee of the Husband.

That a Rent or Annuity was aſſigned for Dower, and accepted. Mo. 59. *Cro. El.* 451.

That her Husband deviſed to her Lands in Lieu of Dower, which ſhe accepted. Bro. V. M. 266. *Semb.* 1 *Leo.* 137.

That 20 *Acres of Wheat, Common of Paſture or other Profit out of the Soil, was aſſigned. Mo.* 59.

But

But an Aſſignment by the Huſband's Executor is no Plea. *R. Mo.* 26.

If the Tenant pleads an Aſſignment of Rent, *&c.* he muſt ſhew, that he had a ſufficient Eſtate out of which the Rent might be aſſigned. *R.* 2 *Leo.* 10.

That the Aſſignment was abſolute; for upon Condition, *&c.* is not ſufficient. *R. Cro. El.* 452.

And he muſt plead *quod aſſignavit*; for *quod dedit et conceſſit* is not ſufficient; tho' they are the Words of the Deed. *R. Cro. El.* 452.

That there was a Demiſe for Years before Coverture, rendring Rent, and pray that the Demandant may be endowed of the Reverſion and Rent. (2 Y. 16.) Term for Years *in Eſſe.*

But if a Term for Years is not pleaded, it ſhall not be allowed, as a prior Title, in Ejectment by Tenant in Dower after her Recovery. 1 *Sal.* 291.

That the Demandant has releaſed her Dower to the Tenant of the Freehold. (2 Y. 17.) Releaſe.

But a Releaſe to the Tenant in Poſſeſſion, without ſaying *Tenen' liberi Tenementi*, is no Plea. *R.* 2 *Cro.* 151.

(2 Y. 18.) Voucher in Dower.

So the Tenant may vouch the Heir.

And if the Heir enters into Warranty, and ſays *Riens per Diſcent*, the Demandant ſhall have Judgment againſt the Tenant immediately. *R. Mo.* 25.

So tho' the Heir has only an Eſtate Tail. *Dub. Mo.* 25.

So by the *St.* 32 *H.* 8. 1. If Tenant by Knight's Service deviſes (which will be void for a third Part) Dower ſhall be recovered out of two Parts, where the Heir enters generally with the Deviſee, or makes Partition with him. 2 *Leo.* 131.

Otherwiſe, if the Heir enters into a third Part in Severalty. *R.* 2 *Leo.* 131.

(2 Y. 19.) Judgment in Dower.

If the Tenant appears and makes Default in the ſame Term, there ſhall be final Judgment againſt him. 2 *Sand.* 46.

If he confeſſes the Action, or *Nihil dicit*, or pleads *Non informatus*, there ſhall be Judgment thereon. 1 *Bro. Ent.* 202, 204.

If the Tenant makes Default in another Term, a *Petit Cape* ſhall iſſue. 2 *Sand.* 46. 1 *Vent.* 60.

And if he cannot ſave his Default upon the Return of the *Petit Cape*, there ſhall be final Judgment againſt him.

So, if the Tenant pleads that the Husband is alive, and the Demandant at the Day for Trial is ready with her Proofs, there ſhall be final Judgment againſt the Tenant, if he makes Default. 2 *Inſt.* 80.

If the Demandant is not preſent with her Proofs, there ſhall be a *Petit Cape* awarded. *Ibid.*

So, if the Tenant makes Default at a Trial by Jury, there ſhall be a *Petit Cape* againſt him, and if he does not ſave his Default, there ſhall be final Judgment againſt him.

So, there ſhall be Judgment by Default, tho' the Tenant is an Infant. *R.* 2 *Cro.* 111.

The Judgment in Dower ſhall be *Quod querens recuperet Seiſinam de* 3 *Parte Tenementor' petit'.*

By the *St. Mert.* 20 *H.* 3. 1. *Si recuperaverit Tenementa de quibus Vir obiit ſeiſitus, Tenens reddat Damna, viz. Valorem Dotis a Tempore Mortis Viri uſque ad Diem, quo, per Judicium Curiæ, Seiſinam ſuam recuperaverit.*

And therefore after Judgment for Seiſin, and *Habere facias Seiſinam* awarded, if the Demandant makes a Suggeſtion upon the Roll, that her Husband died ſeiſed, there ſhall be a Writ to inquire what Damages, *&c.* *Clift* 302. 1 *Lev.* 38.

And upon the Return of the Inquiſition, there ſhall be Judgment *quod recuperet Valorem* and her Damages. *Town. Jud.* 101. *Ray.* 366. 2 *Mod. Ca.* 25.

Or the Jury, who try the Iſſue, may alſo inquire of the Value and Damages.

Or the Demandant may remit the Value and Damages, and have an *habere facias Seiſinam* immediately. *Town. Jud.* 100.

Or, if ſhe remits the Damages, and the Inquiſition is afterwards annulled, ſhe may have another Inquiſition for the Value of the Land. *R. Ray.* 366.

If the Inquiſition finds that the Husband did not die ſeiſed *prout eis conſtare poterit*, there ſhall be a new Inquiſition. 4 *Leo.* 21.

If the Demandant ſuggeſts that her Husband died ſeiſed, where he was ſeiſed in Fee and afterwards granted a Rent-charge, and retook an Eſtate Tail, ſhe will be ſubject to the Rent; for ſhe is concluded by her own Suggeſtion, and cannot ſay that ſhe has not Dower out of the ſecond Eſtate. *Co. Lit.* 33. *a.*

[Damages ſhall be given *a Morte Viri*, tho' Demandant has not ſhewn any Demand of Dower *in Pais*, unleſs the Tenant pleads *Tout Temps priſt*. *Dobſon* v. *Dobſon*, *P.* 7 *G.* 2. *B. R. H.* 19.]

[Damages ſhall be given till the Demandant has Seiſin, tho' ſhe had a Writ of Seiſin a Year before. *Ibid.*]

If the Jury give Damages *a Morte Viri* to the Time of the Inquiſition, tho' it is after the Judgment, it will be good. *R.* 1 *Leo.* 56.

So, tho' they give Damages beyond the annual Value of the Land. *Ibid.*

But the Demandant ſhall not recover the Value or Damages, if her Huſband did not die ſeiſed of the Freehold and Inheritance. *Co. Lit.* 32. *b.*

Nor in a Writ of Dower *ad Oſtium Eccleſiæ ex Aſſenſu Patris*, Right of Dower, *&c.* but only in Dower *unde Nihil habet*. *Co. Lit.* 32. *b.*

Or if the Heir comes the firſt Day upon Summons, before any Demand of Dower. *Co. Lit.* 32. *b.* *Vide Ante*, (2 Y. 5.)

Nor if ſhe has Dower by the Aſſignment of the Heir, in *Chancery*, *&c.* for ſhe muſt recover by Plea. *Co. Lit.* 33. *a.*

So the Demandant, upon Judgment by Default after a *Grand Cape*, ſhall have no Damages upon the Inquiſition found, if there was no Notice of executing the Writ of Inquiry. *R.* 3 *Lev.* 409.

[On a Writ of Inquiry, the Damages ſhould only be the Third of the Value of the Land, after deducting Reprizes, from the Death to the Time of awarding Inquiry. *Barnes* 234.]

So, if the Demandant has Judgment and Seiſin, and afterwards upon the Inquiſition the Jury give Damages for the Rent after Seiſin till Inquiſition taken, it will be Error. *R.* 1 *Leo.* 56.

So, if the Tenant dies after Judgment in Dower and Writ of Seiſin executed, the Demandant ſhall not have a *Scire facias* for Inquiry of Damages after the Death of the Tenant, againſt his Heir or Terretenants. *R.* 3 *Lev.* 275. *R.* 1 *Sid.* 188. 1 *Lev.* 38.

So, if there is Error of a Judgment in Dower, and it is affirmed, and before the Writ of Inquiry executed the Demandant dies, her Executor or Adminiſtrator ſhall not have a *Scire facias* for the Damages, *R.* 1 *Sal.* 252. 3 *Lev.* 275. *Sho.* 97. 3 *Mod.* 281. *Carth.* 135.

So, if the Sheriff, upon a Writ of Seiſin after Judgment in Dower, aſſigns 20 Acres to the Demandant, whereof 10 are the Lands of a Stranger, and ſhe enters and accepts the Reſidue, ſhe cannot afterwards avoid it by *Scire facias*; tho' it is not a third Part. *R. Mo.* 679.

If Dower is demanded of Meadow, Paſture, *&c.* the Sheriff may aſſign all Meadow, *&c.* for Dower. *R. Mo.* 12, 19.

But if the Demand is of three Manors, the Sheriff cannot aſſign one Manor, but muſt aſſign a third Part of each. *R. Mo.* 12, 19.

(2 Z) Pleading in Ejectment.

(2 Z. 1.) Declaration.

(2 Z. 1.) Muſt demand a Thing certain. *By whom it lies, Vide Ejectment,* (A.—B.)

EJECTMENT is now uſually brought for Trial of the Title to Lands, &c.

[Very exact Deſcription is not equally neceſſary in Ejectment as in a *Præcipe*. *Cottingham* v. *King*, *T.* 31 *G.* 2. 1 *B. R.* 623.]

[Nor ſo much Strictneſs as was formely required in Ejectments; nor ſuch Exactneſs that the Sheriff may know without any other Information; for Plaintiff is to ſhew and take poſſeſſion at his Peril. *Ibid.*]

And it lies of a Manor, Meſſuage, ſo many Acres of Land, Meadow, Paſture, Wood, &c. 11 *Co.* 55.

So *de una Domo*. *R.* 2 *Cro.* 654. *R. Noy* 37. *Cont.* 2 *Rol.* 486.

De Cotagio. *D.* 1 *Lev.* 58. *R. Cro. El.* 818.

De Coquinâ. *R. Noy* 109.

De Cubiculo. *D.* 1 *Noy* 109. 3 *Leo.* 210.

De Stabulo. *R.* 1 *Lev.* 58.

De Romeâ. *R.* 3 *Leo.* 210.

[Of the Part of a Houſe, if by the Pleading it appears what Part. *Sullivane* v. *Seagrave*, *P.* 12 *G. Str.* 695.]

[Of Part of a Houſe, as *Locum vocatum* a Paſſage-Room, and aſcertained in what Part. *Bindover* v. *Sindercombe*, *H.* 13 *G. Ld. Raym.* 1470.]

So it lies *de Pomario*. *R. Cro. El.* 854. *R.* 2 *Cro.* 654. *R. Noy* 37. *D.* 1 *Lev.* 58.

[Of *Parcella Areæ*, *Parcella Pomarii*, *Parte Piſcinæ*, if ſufficiently deſcribed by the Abuttals. *Bindover* v. *Sindercombe*, *H.* 13 *G. Ld. Raym.* 1470.

[Of *Clauſo Paſturæ vocat.* five Acres, containing five Acres. *Ibid.*]

De Virgatâ Terræ. *Ow.* 18.

De Villâ. *Dub. Sho.* 49.

So it lies of Tithes, and *Portione Decimarum*. *Hard.* 57.

De Herbagio. *Hard.* 330.

Or, *primâ Tonſurâ*. *R. Cro. Car.* 362.

De Paſtur' pro 100 *Ovibus*. *Dal.* 95.

[*Pro communia Paſturæ* generally, if joined with Lands, will be good after Verdict, though the Kind of Common not expreſſed. *Newman* v. *Holdmyfaſt*, *E.* 3 *G. Str.* 54.]

[Of Meſſuages and Lands, with Common of Paſture, *cum Pertinentiis*, good; for it ſhall not be taken for Common in Groſs, and the *cum Pertinentiis* ſhall relate to the Land. *Baker* v. *Roe*, *T.* 8. *G.* 2. *B. R. H.* 127.]

[For Cattle-Gates, in *Yorkſhire*. *Per Lee* J. *Barnes* v. *Peterſon*, *M.* 10 *G.* 2. *Str.* 1063.]

[For a Beaſt-Gate in *Suffolk*: it imports Land and Common for one Beaſt. *Bennington* v. *Goodtitle*, *H.* 11 *G.* 2. *Str.* 1084. *Andr.* 106.]

[Cattle-gates ſhall be underſtood to mean Common of Paſture for Cattle; and after Verdict, for Common Appurtenant. *Metcalfe* v. *Roe*, *M.* 9 *G.* 2. *B. R. H.* 167.]

Of a Coal-Mine. *R.* 2 *Cro.* 150. *R. Noy* 121.

Of a Boilery of Salt. *D.* 2 *Cro.* 150. *Noy* 132. 1 *Lev.* 114.

Of Land and a Coal-Mine in the ſame Land, for it is no *bis petit'* in a perſonal Action. *R.* 2 *Cro.* 21.

De Subboſco. *R.* 2 *Cro.* 483.

[It lies for *alder carr*, in *Norfolk*. *Barnes* v. *Peterſon*, *M.* 10 *G.* 2. *Str.* 1063.]

De quadam Fabricâ. *Hard.* 58.

De Terrâ montana. *Hard.* 58. *R. cont.* 2 *Rol.* 167, 189.

[Of one hundred Acres of Mountain, good in *Ireland*, where Mountain deſcribes the Quality rather than the Situation. *Ld. Kildare* v. *Fiſher*, *M.* 4 *G. Str.* 71.]

[(After Verdict and Affirmance of Judgment there) theſe Deſcriptions were held ſufficient in *Ireland*.]

[In the *County* of *R.* without naming a *Vill.*]

[Town and Tenement of *B.* and the Fairs and Markets thereto belonging.]

[Quarter.]

[Part of *S. M.* and *D.*]

[A large Deer-Park in the County of *R.*]

[A ſmall Park or Field in the Poſſeſſion of *A.* (not ſaying where.)]

[And although the Quantity and Quality of the Land is not ſpecified. *Cottingham* v. *King*, *T.* 31 *G.* 2. 1 *B. M.* 623.]

Of ſo many Acres of Bog. *R. Cro. Car.* 512.

[It lies by the Owner of the Soil, for Land, Part of the Highway; for he has a Right to all above and under Ground, except only Right of Paſſage, and ought to have Specific Remedy to recover the Land itſelf. *Goodtitle* v. *Alker*, *H.* 30 *G.* 2. 1 *B. M.* 133.]

[*Land* is a ſufficient Deſcription, though Part of a Houſe is built by Encroachment upon it; for Plaintiff claims the Land, not the Nuſance, and more Latitude is allowed in Ejectments (where ſufficient Certainty is enough) than in real Actions. *Ibid.*]

But it does not lie where no Certainty appears, whereof the Sheriff can deliver Poſſeſſion: As, if the Declaration is *de Tenemento*. *Mar.* 96.

De Repoſitorio. *Per* 3 *J. Mar.* 96. *Dub. Cro. Car.* 555. *Jon.* 454.

De Meſſuagio ſive Tenemento. *R. Noy* 86. *D.* 2 *Cro.* 125, 621. *Cro. Car.* 188. *R.* 3 *Leo.* 228. *R.* 3 *Mod.* 238. *R. after Verdict.* 1 *Sid.* 295.

[For a Meſſuage, Garden, and a Tenement. *Goodtitle* v. *Walton*, *P.* 2 *G.* 2. *Str.* 834.]

[For one Meſſuage or Tenement. *Barnes* 173. *Goodright* v. *Flood*, *M.* 10 *G.* 3. 3 *Wilſ.* 23.]

[So for a Meſſuage in *A.* or *B.* or one of them. *Barnes* 184.]

De Meſſuagio et Terris eidem ſpectan'.

De Peciâ Terræ. *Ow.* 18. *Mo.* 422, 702.

De Peciâ Terræ vocat' B. *Ow.* 18. *Mo.* 422, 702. Or *continen'* 20 *Acr'*. *R. Jones* 400. *Vide infra.*

De Clauſo Terræ, containing three Acres. *R.* 11 *Co.* 55. *Dub. Cro. El.* 339. *but R. cont. Cro. El.* 235. *R.* 2 *Cro.* 435. *D.* 2 *Cro.* 654. 1 1 *Lev.* 58. *R.* 3 *Lev.* 97. *Cont. Hard.* 57. *Vide infra.*

De tali Parte Meſſuagii in Occupatione D. quæ ſtat ſuper Ripam. *R. Mar.* 97, 8.

Of Common in Groſs. *D. P.* 2 *Ja. B. R.*

Nor of a Fiſhery, Rent, or other Profit *aprendre*. *R. Cro. Car.* 492.

So, it does not lie without ſhewing the Quantity and Quality of the Land: As, how many Acres of Land, Meadow, and Paſture, *&c.* *R.* 11 *Co.* 55. 1 *Sal.* 254. And ſo much by Eſtimation is not ſufficient. *Ley* 82. *R. Cro. Car.* 573.

It does not lie *de omnibus Decimis* in *D.* without ſaying, whether they are Tithes of Corn, *&c.* *Mo.* 837.

Nor *de quartâ Parte Prati*, without ſaying how much the Whole contains. 1 *Lev.* 213.

Nor *de Caſtro, Villâ, et Terris in K.* *Yel.* 118.

Nor *de quinque Clauſis vocat' F. continent'* 3 *Acr. Terræ et Paſtur'*, without ſaying how much Land or Paſture each contains. *R.* 4 *Mod.* 97. 1 *Sal.* 254. *Sho.* 338. *Vide infra.*

Nor *de* 300 *Acris vaſti*. *R. Hard.* 57, 58.

So it does not lie *de Rivulo*, or *Aquæ Curſu*; for it muſt be ſo many Acres of Land *Aquâ coopert'*. *R. Yel.* 143.

Nor *de Pannagio*; for this is only a Privilege to take Pannage. 1 *Lev.* 213. 1 *Sid.* 417.

Yet, it ſeems ſufficient, if ſo much Certainty appears, upon which the Sheriff can deliver Poſſeſſion: As, Ejectment *de Peciâ Terræ vocat' B.* or *Clauſo Terræ vocat' B.* *R.* 2 *Cro.* 435. 3 *Lev.* 97. *Vide ſupra.*

De 2 Clauſis Terræ continent' 3 Acr' Terræ; tho' it is not ſaid how much each Cloſe contains. *Per 3 J. 2 Cro.* 435.

De quodam Loco vocat' the Veſtry. *R. 3 Lev.* 96.

De Terris de K. continent' 90 Acras. Dub. Sho. 49.

So, *de Mineris Carbonum in A.* without ſaying how many, if it be the uſual Phraſe of the Country. *R. 4 Mod.* 143. *Sho.* 364. 1 *Sal.* 255.

So, *de Meſſuagio ſive Tenemento et 4 Acris Terræ eidem ſpectan'* is ſufficient for the four Acres; for *eidem ſpectan'* ſhall be rejected. *R. 3 Leo.* 228.

De Meſſuagio ſive Burgagio in H. for they are Synonymous in a Borough. *R. Hard.* 173.

De Meſſuagio ſive Tenemento vocat', the Black Swan. 3 *Mod.* 238. 1 *Sid.* 295.

So it ſhall be aided, if the Verdict finds the Defendant *Not Guilty* for a Part which is uncertain. 1 *Sid.* 295.

Or, if the Plaintiff releaſes as to that. 1 *Sid.* 295. *Hard.* 58.

[Ejectment lies in *C. B.* for Land in *Wales. Barnes* 181.

[The Court will not conſolidate Declarations in Ejectment againſt different Perſons, tho' the Title be the ſame in all. *Smith* v. *Crabb, H.* 14 *G.* 2. *Str.* 1149.]

[But if there are ſeveral Ejectments againſt different Perſons, and all the Ejectments for the ſame Premiſes, they ſhall be conſolidated. *Barnes* 176.]

(2 Z. 2.) Muſt be upon a good Demiſe.

So the Declaration in Ejectment muſt ſhew a good Demiſe: And therefore if he declares upon a Demiſe of 10 *Acr' Terræ et* 20 *Acr' Prati per Nomen* 10 *Acrar' Prati plus vel minus*, it is bad. *R. Ycl.* 166.

On a Demiſe of Tithes, without ſaying, by Deed. *R. 2 Cro.* 613.

Upon a Demiſe by *A.* and *Ann* his Wife, where ſhe was named *Agnes. R. Cro. El.* 776.

Upon a Demiſe of the fourth Part of a Meſſuage, by Virtue whereof he entred into *Tenementa prædict'. Cont. Cro. El.* 286. for it ſhall be reſtrained to ſo much as was demiſed.

So, if the Declaration does not ſhew the *Vill*, where the Land demiſed lies, except in the *Per Nomen, &c. R. Cro. El.* 822.

But a Declaration of *Hilary* Term, upon a Demiſe within the ſame Term, is good. 1 *Vent.* 135.

Or upon a Demiſe, 30 *Feb. habendum a Die Dat'* (which is impoſſible) for the Leaſe commences immediately. 1 *Vent.* 137.

Or upon a Demiſe *per Scriptum Obligator' habendum a Die Dat' Indenturæ prædict. R.* 1 *Vent.* 137.

Or upon a Demiſe 20 *Feb. habendum a Die Dat'*, for it ſhall be intended to commence upon the Day of the Demiſe. *R. 2 Cro.* 646.

Or, *habendum* from *Michaelmas ante Dat'. R. Cro. El.* 606.

Or, *habendum* a *Confectione*, without ſaying when it was delivered. *R. Cro. El.* 773.

[Demiſe from Heir by Deſcent laid on the Day of the Death of the Anceſtor to hold from the Day before, is good after Verdict. *Roe* v. *Herſey, M.* 12 *G.* 3. 3 *Wilſ.* 274.]

So, upon a Demiſe by a College or Eccleſiaſtical Perſon, without ſhewing that there was a Rent reſerved, *&c.* purſuant to the *St.* 13 *El. R. Sav.* 129.

If the Declaration alledges a Demiſe, *Virtute Cujus* Defendant *fuit Poſſeſſionat' et poſtea eject'*, it is good, tho' the Entry or Ejectment is alledged at a Day precedent, blank or impoſſible. *R. 2 Cro.* 96, 154, 312, 662. 2 *Bul.* 29. *Dub.* 1 *Sid.* 8. *Cont. Cro. El.* 766. *R. cont.* 3 *Mod.* 198.

[The Court will on Conſent, but not without, give Leave to enlarge the Time of the Demiſe. *Thruſtout* v. *Gray, M.* 9 *G.* 2. *B. R. H.* 165.]

So Miſpriſion in the Demiſe may be amended, if the Declaration delivered was good. *Vide Abatement*, (L. 2.)

[There can be no Alteration in the Declaration in the Iſſue, from the firſt Declaration delivered, only in the Defendant's Name. *Baſs* v. *Bradford, M.* 12 *G.* 2 *Ld. Raym.* 1411.]

(2 Z. 3.) Plea.

When a Declaration is delivered to the Tenant in Poſſeſſion, the Courſe now is that he, who claims Title, muſt procure himſelf to be admitted as a Defendant, and enter into the general Rule, whereby he agrees to appear and receive a Declaration, and plead *Not Guilty*, and at the Trial to confeſs *Leaſe, Entry, and Ouſter*. *

* By the *St.* 4 *Geo.* 2. 28. The Court may give Leave to the Landlord to defend with the Tenant in Poſſeſſion, if he appears, or, if not, to defend alone.

[If Servants refuſe to call their Maſter, or to take Declaration, the Court will order leaving it at the Houſe to be good Service. *Douglas* v. ———, *M.* 10 *G. Str.* 575.]

[If Copy of Declaration is tendered to Wife of Tenant in Poſſeſſion, in the Shop, the Notice to appear is *offered to be read*, but ſhe goes away, and Declaration is left in the Shop, the Court will grant Rule to ſhew Cauſe, why not good Service; ſo, if Tenant keeps out of the Way to avoid being ſerved. *Doe* v. *Roe*, *P.* 5 *G.* 3. 2 *Wilſ.* 263.]

[If Declaration is tendered (through a Window) and refuſed, and Violence threatned, 'tis ſufficient to leave Declaration. *Barnes* 174.]

[Or if tendered, and on Non-acceptance left on the Floor, and the Subſcription read, ſo that the Tenant who had retired might hear, it is good. *Barnes* 185.]

[And where Tenants abſcond, Court will order Service on a Servant to be good. *Barnes* 188, 189, 190.]

[Or if Lunatick, on the Perſon who has the Cuſtody. *Barnes* 190.]

[So, if Declaration is delivered to a Daughter or a Father, and owned by Tenant, 'tis good. *Barnes* 175, 176, 183.]

[If Tenant abſconds, Declaration delivered to Servant, and another fixt on Door, is good. *Barnes* 173.]

[Service on Churchwardens and Overſeers, for a Houſe they rented for Lodging the poor, good. *Barnes* 181.]

[On the Wife of Tenant, as ſhe informed Deponent, and he believes, good. *Barnes* 194.]

[Notice to appear given in Beginning (though not firſt Day) of *Michaelmas* Term, in *London*, good. *Barnes* 175.

[The Notice muſt be to appear on the firſt Day in full Term; not on the Eſſoin-day. *Holdfaſt* v. *Freeman*, *T.* 9 *G.* 2. *Str.* 1049.]

[Appearance muſt be entered with *Filazer*, and marked on common Rule. *Barnes* 177.]

[Tho' Declaration and Subſcription is read to Wife through a Window, and then fixed to the Door, and Huſband owns the Receipt, it is not good Service. *Barnes* 171.

[Affidavit of Service on Wives of *A.* and *B.* who, or one of them, are Tenants, bad. *Barnes* 174.]

[So, on *A. B.* Tenant, or *C.* his Wife. *Barnes* 173.]

If the Plaintiff in Ejectment, or in an Action for the meſne Profits, afterward releaſes, he may be committed for a Contempt; for he is only Nominal. 1 *Sal.* 260.

By the *St.* 4 *Geo.* 2. 28. If no Tenant in Poſſeſſion, the Declaration may be fixt on the Door of the Houſe, or if no Houſe, on ſome Notorious Part of the Land. *

*[This Act ſeems to relate only to Ejectments for Non-payment of Rent, where the Landlord has a Right to re-enter.]

[Ejectment on vacant Poſſeſſion in *London* or *Middleſex* may be moved any Time in Term. *Barnes* 172.]

[Landlord

[Landlord is not made Defendant in Caſes of vacant Poſſeſſion (except within the Act concerning Landlords and Tenants by Leaſe, with Clauſe of Re-entry) but he that firſt ſeals Leaſe on Premiſes muſt have Poſſeſſion. *Barnes* 177.]

[Tenants are not obliged to appear, though indemnified. *Barnes* 173.]

[If Tenant in Poſſeſſion refuſe to appear and make Defence, there is no Relief. *Goodright* v. *Hart*, *P.* 2 *G.* 2. *Str.* 836. *N. B.* This was before, and was the Occaſion of the *Stat.* 11 *G.* 2. *c.* 19. By which if Tenant does not appear, Judgment againſt caſual Ejector, but Landlord may have Leave to appear and enter into common Rule and Execution ſhall be ſtaid till further Order.]

[If Landlord obtains a Rule to be made Defendant, the Plaintiff at Trial muſt prove that Defendant or his Tenant was in Poſſeſſion. *Smith* v. *Mann*, *T.* 21 & 22 *G.* 2. 1 *Wilſ.* 220.]

He, who claims Title, muſt be a Defendant with the Tenant in Poſſeſſion. *Per C. B. M.* 7 *An.*

Or, he may appear alone by Order of the Court, or by Conſent of the Attorney for the Plaintiff.

[The Court (of *B. R.*) will not order the Landlord to be made Defendant in the Room of the Tenant in Poſſeſſion, on an Affidavit that he is a material Witneſs. *Bourne* v. *Turner*, *T.* 11 *G.* *Str.* 632.]

[If Ejectment is brought by one claiming as Heir of a Copyhold, and the Lord of the Manor, who claims by Eſcheat *pro Defectu Hæredis*, applies to be admitted to defend with the Tenant in Poſſeſſion, or alone; the Court will direct the Lord to bring Ejectment againſt the Heir, and the Heir to be admitted to defend with Tenant, or alone; if the Lord refuſes, they will diſcharge his Rule to be admitted; if the Heir refuſes, they will admit the Lord to defend. *Fairclaim* v. *Sham-title*, *H.* 2 *G.* 3. 3 *B. M.* 1290]

[Landlord is not to be made Defendant without Tenant in Poſſeſſion, though he refuſes to appear, only joined. *Barnes* 172.]

[So if Tenant has quitted Poſſeſſion. *Barnes* 175.]

So he, who claims Title, ſhall be joined as a Defendant, tho' the Plaintiff oppoſes it, and he is intitled to Privilege. 1 *Sal.* 256.

Tho' ſhe is Wife to the Leſſor. 1 *Sal.* 257.

But he ſhall not be joined upon the Plaintiff's Motion, without his Requeſt. 1 *Sal.* 256.

Nor ſhall he be made a Plaintiff by Rule, who is intitled to Privilege. 2. 1 *Sal.* 256.

[The Court will order an Infant Leſſor of the Plaintiff to name a good Plaintiff, to be anſwerable for Coſts. *Noke* v. *Windham*, *P.* 12 *G.* *Str.* 694. *Throgmorton* v. *Smith*, *P.* 5 *G.* 2. *Str.* 932. *Birchman* v. *Noright*, *T.* 7 *G.* 2. *B. R. H.* 56.

[But not a Leſſor having Privilege of Parliament. *Preſton* v. *Lingen*, *M.* 8 *G.* *Str.* 479.]

So the Defendant may pray a ſpecial Rule to defend for ſo much.

If it be a Church, in which he ought to perform Divine Service, he may have a ſpecial Rule to defend for that. 1 *Sal.* 256.

[In Ejectment for a Chapel, the Parſon cannot defend only for a Right to enter and perform Divine Service, notwithſtanding *Salk.* 256. *Martin* v. *Davis*, *M.* 5 *G.* 2. *Str.* 914.]

So there may be a Rule to amend the Declaration and plead in a ſpecial Manner, to bring the Merits of the Caſe in Queſtion. *Carth.* 180.

[Defendant need not plead the Statute of Limitations, for Plaintiff muſt ſhew a Right of Poſſeſſion as well as of Property. *Taylor* v. *Horde*, *H.* 30 *G.* 2. 1 *B. M.* 60.]

[Though Defendant confeſſes Leaſe, *&c.* he may afterwards move to ſet aſide Verdict for Variance. *Barnes* 175.]

[If an Affidavit, on which a Motion is originally made, is intitled in the Name of the caſual Ejector, and the Rule to ſhew Cauſe, *&c.* is in the Name of the Tenant in Poſſeſſion, it is wrong, and the Rule ſhall be diſcharged; for

it appears to be a different Cauſe, and a Rule in one Cauſe cannot be ſupported by an Affidavit in another. *Davenport* v. *Jackſon*, *P.* 12 *G.* 2. *Andr.* 368.] 1

(2 Z. 4.) Judgment.

If the Defendant does not appear within four Days after the Beginning of the Term, after the Declaration delivered (if the Action is in *London* or *Middleſex*) upon an Affidavit of the Delivery of the Declaration to the Tenant himſelf or his Wife, before the Eſſoin Day of the ſame Term, with Notice to appear at the Beginning of the Term, there ſhall be Judgment againſt the Caſual Ejector named in the Declaration, and thereupon an *Habere facias Poſſeſſionem*, to put the Plaintiff in Poſſeſſion.

Or, upon Delivery to the Servant, if by Letter or otherwiſe the Tenant in Poſſeſſion afterwards acknowledges Notice thereof. 1 *Sal.* 255.

[Declaration muſt be delivered before the Eſſoin-day of the Term, or no Judgment till next Term. *Barnes* 172.]

[Declaration of *Trinity*, with Notice to appear next *Hilary*, Appearance of *Michaelmas* is bad. *Barnes* 250.]

If the Plaintiff has Judgment for the Whole, when he had Title only to a Moiety, it is no Error. *Dub. Cro. Car.* 7.

So, if the Defendant does not appear within a Week after the Term, when the Action lies in another County, and an Affidavit is made of the Delivery of the Declaration before the Eſſoin Day of *Hilary* or *Trinity* Term, with Notice to appear the next Term.

If the Declaration be delivered in ſuch County, before the Eſſoin Day of *Michaelmas* or *Eaſter* Term, with Notice to appear the next Term, upon ſuch Affidavit there ſhall be a Rule for the Defendant to appear in *Hilary* or *Trinity* Term; and if upon Service of the Rule he does not appear accordingly, there ſhall be Judgment againſt the Caſual Ejector.

But after Judgment ſigned, a Judge, before the Aſſizes, if Poſſeſſion is not taken, may direct the Plaintiff to accept a Plea. *Sal.* 516.

If the Term expires *pendente Lite*, yet the Plaintiff may recover Damages, tho' not the Term. (*Vide* 2 *Str.* 1056.)

And the Term ſhall not be enlarged without Conſent, tho' the Plaintiff was delayed by Injunction. 1 *Sal.* 257. *Mod. Ca.* 130. *Carth.* 3.

If the Declaration be delivered of a Houſe or Land void of a Poſſeſſor, there muſt be a Leaſe executed upon the Land, *&c.* and before Judgment, there ſhall be an Affidavit of the Leaſe, Entry, *&c.* and a Rule upon Motion for a Peremptory Plea. *R.* 1 *Sal.* 255.

[There ſhall be a Rule for Judgment, on Affidavit of the Meſſuage being empty and Door ſhut, of Leſſor entering by ſtanding in the Threſhold, and taking hold of the Knocker, Leaſe, Entry, *Ouſter* and Delivery of Ejectment. *Bidgood* v. *Hawes*, *P.* 8 *G.* 2. *B. R. H.* 112.]

[Leaving Beer in an Alehouſe-cellar, is keeping Poſſeſſion, and if Judgment is ſigned on a Leaſe ſealed as on a vacant Poſſeſſion, it ſhall be ſet aſide. *Savage* v. *Dent*, *M.* 10 *G.* 2. *Str.* 1064.]

But Motion for Judgment againſt the Caſual Ejector in *London* or *Middleſex* will not be allowed, if it is not made within a Week after the firſt Day of *Michaelmas* or *Eaſter* Term, or within four Days after the firſt Day of *Hilary* or *Trinity* Term. *Per Rule*, *Tr.* 32 *Car.* 2. *Mills* 80.

Or there is not a new Notice given to the Tenant in Poſſeſſion. 1 *Sal.* 257.

[Caſual Ejector cannot confeſs Judgment. *Hooper* v. *Dale*, *M.* 9 *G.* *Str.* 531.]

If Judgment is obtained upon Service of *A.* who counterfeits himſelf Tenant in Poſſeſſion, there ſhall be Reſtitution. *Mod. Ca.* 73.

[If Judgment is ſet aſide, and Poſſeſſion ordered to be reſtored, but Leſſor or Plaintiff abſconds, ſo the Rule ineffectual, a Writ of Reſtitution ſhall iſſue. *Barnes* 178.]

So if the Plaintiff was nonſuited, or had a Verdict againſt him in a former Ejectment for the ſame Tenements, he ſhall be reſtrained from Proceeding upon Motion, till he pays the Coſts of the former Action. 4 *Mod.* 379.

[If Plaintiff had Rule for Trial at Bar, but it being on wrong Demiſe, delivers new Ejectment, the Court will not grant new Trial at Bar, but on Payment of Coſts of the former Ejectment. *Ld. Coningſby's Caſe, H.* 9 *G. Str.* 548.]

[Plaintiff ſhall not proceed in new Ejectment, till he has paid Coſts of the firſt, though he has brought Writ of Error. *Grumble* v. *Bodilly, T.* 9. *G. Str.* 554]

[If there is Judgment for Defendants in Ejectment on the Demiſe of Huſband and Wife, (the Remainder being in the Wife, who proceeds after her Huſband's Death) becauſe Tenant for Life, though a Papiſt, educated Abroad, may conform; and on his Death, Wife brings new Ejectments againſt ſome of the former Defendants and others, the Court will ſtay Proceedings in the new, till the Coſts of the old are paid. *Doe* v. *Hatherby, P.* 14 *G.* 2. *Str.* 1152.]

If the firſt Ejectment was in *C. B.* and there was a Rule there to ſtay him in a ſecond till Coſts paid, there ſhall be the ſame Rule in *B. R.* if he afterwards ſues there. 1 *Sal.* 255.

But the Defendant in a former Ejectment ſhall not be reſtrained, if the Verdict was againſt him, till he pays the Coſts; for, tho' he was barred before, the new Ejectment by him is not vexatious. *R.* 4 *Mod.* 379.

So, if the Defendant brings Error, and afterwards delivers a Declaration in Ejectment, he ſhall not be bound to pay the Coſts upon the firſt Ejectment. 1 *Sal.* 259.

Yet the Court will ſtay all Proceedings on the ſecond Ejectment, till Error determined. 1 *Sal.* 258.

[If a Mortgagee brings Ejectment, the Court will order him to ſhew Cauſe, why, on Payment or bringing into Court Principal, Intereſt and Coſts, Proceedings ſhould not be ſtayed. *Anon. H.* 7 *G. Str.* 413.]

[On the Application of the Mortgagor, or his Aſſignee of the Equity of Redemption, the Court will ſtay Proceedings in Ejectment on Payment of Principal, Intereſt and Coſts, without paying Money due on a Bond; but not if it was an Heir. *Archer* v. *Snatt*, 21 *H. G.* 2. *Str.* 1107. *Andr.* 341.

[If Mortgagee has given Notice that he requires a Bond, (a Lien on the Eſtate) to be paid, as well as Mortgagee, there cannot be a Rule to ſtay Proceedings on Payment of Principal, Intereſt and Coſts, on Mortgage only. *Barnes* 177.]

[But this extends not to Bond due to an Aſſignee in his own Right. *Barnes* 182.]

[On Payment of Principal, Intereſt and Coſts, the Court will ſtop Proceedings in Ejectment on a Mortgage, and on the Bond for Performance of Covenants; and will diſcharge Defendant out of Cuſtody, though he had agreed to convey Equity of Redemption to Plaintiff, if Plaintiff has not tendered him a Conveyance to be executed. *Skinner* v. *Stacey, M.* 18 *G.* 2. *Wilſ.* 80.]

[After Judgment on Re-entry for Non-payment of Rent, and before Writ of Poſſeſſion executed, the Court will ſtay Proceedings, on Payment of Rent and Coſts. *Goodtitle* v. *Holdfaſt, P.* 4 *G.* 2. *Str.* 900.]

[On ſtaying Proceedings on Payment of Arrears of Rent and Coſts, the Landlord ſhall only allow Land-tax for the Rent, and not what was paid more on account of Improvements. *Yeo* v. *Leman, T.* 16 *G.* 2. *Str.* 1191. *Wilſ.* 21.

[On ſtaying Proceedings, on Payment of Money due, the Prothonotary will make juſt Allowances. *Barnes* 176.]

[Rent due to Leſſor of Plaintiff as Deviſee, more due to him as Executor, Proceedings ſtaid on paying what due to him as Deviſee. *Barnes* 184.]

[In Ejectment on two Demiſes of different Lands, Judgment to recover *Terminum ſuum*, in the ſingular, is good. *Worral* v. *Bent, T.* 3 *G.* 2. *Str.* 835.]

[If there are two Counts in the Declaration on two Demiſes of different Perſons of the ſame Premiſſes, and Judgment is entered for Plaintiff on one Count, and for Defendant on the other; the Court, on Error will interpret the *Tenementa*

menta prædict. as to the ſecond, to mean the *Term* in the Premiſſes, and it will be well. *Fiſher* v. *Hughes*, *T.* 5 *G.* 2. *Str.* 908.]

[Or if the Judgment is, that Plaintiff recover his *Terms* (in the Plural) on two Demiſes of the ſame Premiſſes for the ſame Term, both as to Commencement and Duration; on Error brought, the Court, in order to ſupport the Judgment, will intend, that the two Leſſors were Joint-tenants, and made ſeparate Leaſes. *Morres* v. *Barrey*, *H.* 16 *G.* 2. *Str.* 1180. 1 *Wilſ.* 1.

[If Judgment is regularly ſigned, but without Loſs of Trial, it may be ſet aſide on Payment of Coſts and taking notice of Trial. *In B. R. as in C. B. Dobbs* v. *Paſſer*, *P.* 7 *G.* 2. *Str.* 975.]

[The Court cannot ſtay Proceedings after ſpecial Verdict in Ejectment, though the Leſſor of Plaintiff's Title is at an End; for he may proceed for Damages and Coſts. *Thruſtout* v. *Grey*, *M.* 10 *G.* 2. *Str.* 1056.]

[Not every Perſon claiming Title is Landlord within 11 *G.* 2. but one who is in ſome Degree of Poſſeſſion, as by receiving Rent, *&c.* *Barnes* 193.]

[If Landlord (by Virtue of *Stat.* 11 *G.* 2. *c.* 19.) appears alone, and after Judgment for Plaintiff brings Error, Plaintiff cannot have Execution till Error determined. *Jones* v. *Edwards*, *M.* 19 *G.* 2. *Str.* 1241.]

[If the Landlord (on Tenant's not appearing) makes himſelf Defendant, and Plaintiff obtains Judgment againſt him, and moves for Leave to take out Execution againſt caſual Ejector, and Defendant, who has regularly ſued out Error before this, does not ſhew it for Cauſe againſt the Rule for Execution, which is made abſolute, and Poſſeſſion delivered, this ſhall not be afterwards ſet aſide as irregular. *George* v. *Wiſdom*, *H.* 32 *G.* 2. 2 *B. M.* 756.]

[If Landlord is added Defendant to one Tenant, who appears for Part, and defends alone for other Part where Tenant refuſes to appear, Plaintiff ſhall have Judgment for this laſt Part againſt caſual Ejector, with Stay of Execution. *Barnes* 179.]

[If ſome Defendants confeſs Leaſe, *&c.* and there is Verdict againſt them, and others do not confeſs, and are acquitted, Plaintiff ſhall have Judgment againſt caſual Ejector. *Barnes* 174.]

[If Landlord made Defendant, does not appear to confeſs, *&c.* Execution ſhall be againſt the caſual Ejector. *Barnes* 182, 185, 186.]

[The Court will not give Leave to take out Execution on Judgment againſt caſual Ejector, after Verdict for Plaintiff, pending Error brought by Defendant. *Barnes* 208.]

[For Non-payment after Iſſue, it may be ſigned againſt Defendant, but not againſt caſual Ejector. *Barnes* 253.]

[If Leſſor of Plaintiff dies after Iſſue joined, and before the Aſſizes, and Plaintiff is nonſuited becauſe Defendant does not confeſs Leaſe, *&c.* Executor of Leſſor ſhall not have Coſts taxed on the common Conſent-rule. *Thruſtout* v. *Bedwell*, *T.* 26 & 27 *G.* 2. 2 *Wilſ.* 7.]

[If in Ejectment againſt two, one dies after Iſſue, but before Trial, the Death muſt be ſuggeſted on the Plea-roll, but need not on the *Niſi prius* Roll, it muſt be awarded, that Proceedings ſtay againſt the Deceaſed, but no need of *quod quer. nil capiat*; and Judgment muſt be, not for a Moiety, but that Plaintiff recover his Term, but he muſt take Execution for no more than he has a Right to recover. *Far* v. *Denn*, *T.* 30 & 31 *G.* 2. 1 *B. M.* 362.]

[A Judgment in Ejectment is a Recovery of the *Poſſeſſion* without Prejudice to the *Right*; and he who enters under it can only be poſſeſſed according to Right; and he who recovers a naked Poſſeſſion only without Right, can convey no other to his Feoffee. *Taylor* v. *Horde*, *H.* 30 *G.* 2. 1 *B. M.* 60.]

[On a ſpecial Verdict it ought to appear, that Leſſor of Plaintiff *might enter* at the Time he brought the Ejectment. *Ibid.*]

[A Leaſe under a Power made unfairly, and in Prejudice of thoſe in Remainder, found in the Cuſtody of the Maker at his Death, ought, at the Trial, to be preſumed to have been ſurrendered, to let in the Statute of Limitations. *Ibid.* *Vide* Poiar.]

[One

[One who recovers Land, Part of a Highway, muſt recover it ſubject to the Eaſement, and the Sheriff muſt deliver Poſſeſſion ſubject to it. *Goodtitle* v. *Alker*, *H.* 30 *G.* 2. 1 *B. M.* 133.]

[The nominal Plaintiff and caſual Ejector are to be conſidered as the fictitious Form of an Action really brought by the Leſſor of the Plaintiff againſt the Tenant in Poſſeſſion, who are ſubſtantially the only Parties to the Suit.]

[There is no Diſtinction between Judgment on Verdict, or by Default.]

[An Action for meſne Profits is conſequential to a Recovery in Ejectment, and may be brought by Leſſor of Plaintiff in his own Name, or that of the nominal Leſſee.]

[The Tenant is concluded by the Judgment, and cannot controvert the Title; conſequently, cannot controvert Plaintiff's Poſſeſſion, which is Part of his Title.]

This Judgment only concludes the Parties, as to the Subject-Matter of it; beyond the Time laid, it proves nothing at all.]

[As to the Length of Time the Tenant has occupied, or as to the Value, the Judgment proves nothing; therefore they muſt be proved, and the Occupation muſt be within the Time laid in the Demiſe. *R. by all the Judges unanimouſly.* *Aſſlin* v. *Parker*, *M.* 32 *G.* 2. 2 *B. M.* 665.]

[If Tenant in Poſſeſſion abſconds, and Plaintiff (the Landlord) ſerves his Houſe-keeper, and fixes another Copy of Declaration on the Premiſſes, on Motion and Service of the Rule in like Manner, Judgment ſhall be entred againſt caſual Ejector. *Sprightly* v. *Dunch*, *H.* 1 *G.* 3. 2 *B. M.* 1116. *Fenn* v. *Denn*, *T.* 1 *G.* 3. 2 *B. M.* 1181.]

[The Court will not arreſt Judgment of *Hilary*, 1 *G.* 3. becauſe the Declaration alledges Defendant entred againſt the Peace of the ſaid King, and lays the Demiſe in the thirty-third Year of the ſaid King. *Small* v. *Cole*, *P.* 1 *G.* 3. 2 *B. M.* 1159.]

[If the Declaration is wrong intitled, (as 17 *G.* inſtead of 16 & 17 *G.*) no Rule for Judgment. *Barnes* 186.]

[On Nonſuit for want of confeſſing Leaſe, *&c.* Plaintiff muſt proceed for Coſts on the common Rule; if, inſtead thereof, he takes *Fi. Fa.* it ſhall be ſet aſide. *Barnes* 182.]

[On Judgment againſt the caſual Ejector, meſne Profits ſhould be recovered from the Delivery of Declaration to Tenant in Poſſeſſion, or from actual Demand; on Judgment againſt Tenant in Poſſeſſion, (or Landlord) from *Ouſter* admitted by common Conſent-rule. *Barnes* 87.]

[Actions for meſne Profits ſhould not be favoured, as they tend to create double Expence, and Plaintiff ſhould be ready at Trial of Ejectment to prove his Damages. *Ibid.*]

[In Action for meſne Profits, if the Tenant has been ſerved, but has not entered into the common Rule, the Title needs not be proved, but Poſſeſſion muſt be proved in both; if he has entred into common Rule, if Action is by Leſſor, his Poſſeſſion muſt be proved, if by Leſſee, it need not. *Barnes* 456, 472, 473.]

[Action for meſne Profits may be brought in Name of nominal Plaintiff, after Judgment by Default againſt caſual Ejector; Coſts of Ejectment inſerted in Declaration as conſequential Damages; on Trial, it is ſufficient to give in Evidence, the Judgment, Writ of Poſſeſſion, and Return of Execution, Defendant's Occupation of Premiſſes, their Value, and Coſts of Ejectment. *Barnes* 472, 473.]

[If a Rule to defend for two-thirds, and Judgment for the Reſt, there ſhould qe an Indorſement of what Part to take Poſſeſſion. *Barnes* 191.]

[If Judge who tried Cauſe reports that general Verdict was good for Part, bad for Part; Rule that Plaintiff ſhall take Poſſeſſion of that Part only which Judge reported good. *Barnes* 468.]

[If Judgment is regularly obtained againſt caſual Ejector, the Tenant having neglected to give Notice to his Landlord, (an Infant) the Court will ſet aſide

Judgment and Writ of Poſſeſſion, order Tenant to pay Coſts, and Landlord to be made Defendant under Terms. *Doe* v. *Roe*, *M.* 7 *G.* 3. 4 *B. M.* 1996.]

[Judgment ſigned againſt caſual Ejector, for Miſtake in Body of Plea of Name of Leſſor of Plaintiff, inſtead of nominal Plaintiff, ſhall be ſet aſide with Coſts. *Barnes* 191.]

[If Declaration is delivered without Prothonotary's Name on it, yet on Motion the Court will make Rule for Judgment, unleſs Appearance in the uſual Time, Notice of Prothonotary's Name being given. *Barnes* 192, 193.

Proceedings ſhall be ſtaid, if the Premiſſes are Lands in ancient Demeſne. *Barnes* 194.]

(3 A. 1.) Proceeding in a Writ of Entry.

Vide Dum fuit infra Ætatem, (A.)

A WRIT of Entry is of divers Natures. *Vide Action*, (D. 2.)

The Proceſs is Summons and *Grand Cape*, and after Appearance a *Petit Cape*.

And therein ſhall be a View, Imparlance, Voucher, *Aid Prier*, and Reſceit.

A Writ of Entry *ſur Diſſeiſin* lies only againſt the Tenant of the Freehold. (*Vide Com. Att.* 132 or 157. *Edit.* 1695. *Weſt. Symb.* 2 *Pt.* 76. *b.*)

And if it is upon a Diſſeiſin by the Tenant himſelf to the Demandant or his Anceſtors, it is in the Nature of an Aſſiſe, and is called a Writ of Entry in the *Quibus*. (*Vide F. N. B.* 191. *C.*)

If upon a Diſſeiſin by any, by whom the Tenant claims, it ſhall be a Writ of Entry in the *Per*. (*Vide F. N. B.* 191. *D.*)

If upon a Diſſeiſin by *B.* to whom *A.* owes Title, by whom the Tenant claims, it ſhall be in the *Per & Cui*. *Ibid.*

If upon a Diſſeiſin beyond theſe Degrees, it ſhall be a Writ of Entry in the *Poſt*. (*Vide F. N. B.* 191. *D.* 192. *F.*)

A Writ of Entry *ſur Diſſeiſin in le Poſt* lies at the Common Law.

So upon Intruſion, but it did not lie upon Alienation in the *Poſt*, till the *St. Marl.* 52 *H.* 3. 30.

(3 A. 2.) To have a Common Recovery.

(3 A. 2.) The Manner of paſſing it. *When it ſhall bar an Intail, Vide Eſtates*, (B. 27, &c.)

Upon a Writ of Entry *ſur Diſſeiſin in le Poſt*, the Common Recovery for Aſſurance of Lands is uſually ſuffered.

And for paſſing ſuch Recovery, an Attorney of *C. B.* muſt make a Note of the *Præcipe*, by which the Curſitor may draw the Writ of Entry, and which mentions the Demandant, Tenant, and the Particulars of the Land. (*Comp. Att.* 133. or 155. *Edit.* 1695.)

This Note ſhall be entred upon the Remembrance of the Prothonotary, with the *Teſte* and Return of the Writ of Entry, and the Names of the Vouchees, and of the Sheriff who makes the Return. (*Com. Att.* 132. or 155.)

If the Tenant and Vouchee appear in Perſon at the Bar, the Recovery may be ſuffered at the Bar before the Writ of Entry is ſealed. (*Vide Com. Att.* 132. or 157.)

If the Tenant or Vouchee do not appear in Perſon, there muſt be a Warrant for an Attorney to appear for them. (*Vide Com. Att.* 133. or 158.)

And the Party muſt appear before him, who takes the Warrant of Attorney, and acknowledge the Warrant, upon which the Judge or Commiſſioners ſubſcribe their Names and the Day of the Caption. *Ibid.*

Any Judge or Baron, and any Serjeant in his Circuit, may take a Warrant of Attorney without a *Dedimus Poteſtatem*. *Ibid.*

If any other takes it, he muſt have a *Dedimus Poteſtatem*. *Weſt. Symb.* 2 *Pt.* 76. *b.*

After the Warrant of Attorney acknowledged, a Writ of Entry ſhall be ſued. (*Vide Com. Att.* 133. or 138.)

And a Fine for Alienation ſhall be paid upon it, as upon a Fine. (*Vide Weſt. Symb.* 2 *Pt.* 76. *b.*)

Then it ſhall be ſealed, and delivered to the Prothonotary, who enters it and endorſes the Return, and makes a Copy of the Count, and re-delivers them to the Attorney. (*Vide Com. Att.* 123, 124. or 158, 159.)

If the Recovery is with ſingle Voucher, or with double, and the Vouchee appears in Perſon, when the Tenant has made his Warrant of Attorney, and the Writ of Entry is ſealed, entred and returned, the Recovery may paſs at the Bar the ſame Term. (*Vide Com. Att.* 124. or 159.)

But, if the Vouchee does not appear in Perſon but by Attorney, there muſt be a Summons *ad Warrantizandum* for him, as well as a Warrant of Attorney. (*Vide Com. Att.* 123, 124. or 158, 159.)

By the *St.* 16 *Car.* 6. The Return of the Summons ſhall be at the fifth Return after the *Teſte* incluſive.

And at the Return of the Summons the Recovery may paſs.

So a Common Recovery may be ſuffered upon a Writ of Right upon a *Præcipe in Capite*. (*Vide Weſt. Symb.* 2 *Pt.* 79.)

But the Demandant need not appear in Perſon, or by Attorney. (*Vide Com. Att.* 123. or 158.)

After the Recovery is paſſed, the Writ of Entry ſhall be filed with the *Cuſtos Brevium*. (*Vide Com. Att.* 157. *Weſt Symb.* 2 *Pt.* 77. *b.*)

And by the *St.* 23 *El.* 3. it may be inrolled in the Office of Inrolments, and if it is afterwards loſt, the Inrolment ſhall be of the ſame Effect, as if the Writ was extant. *Lit.* 299.

So, if a Writ of Entry is loſt out of the Office, when it appears to be once filed, upon a Petition to the *Chancellor* it may be ſupplied by a new Writ *nunc pro tunc*. *In C. B. H.* 8 *Ann. Semb. Lit.* 299.

But, if it does not appear that it was ever filed, it ſhall not be ſupplied. *R. Lit.* 299.

(3 A. 3.) Againſt whom a Writ of Entry lies.

A Writ of Entry for a Common Recovery ought to be againſt him, who has the Freehold of the Eſtate: * And therefore, if it is againſt him in Remainder after an Eſtate for Life, it is Error. *R.* 2 *Leo.* 57.

* By *St.* 14 *G.* 2. 20. the Recovery ſhall be good, without the Surrender of Freehold Leaſes at reſerved Rents. And by the *ſame Statute*, it is ſufficient if the Deed or Fine to make a Tenant to the *Præcipe* be levied or executed before the End of the Term, Great Seſſions, Seſſion or Aſſiſes in which the Recovery is ſuffered.

How a good Tenant to the *Præcipe* ſhall be made, *Vide Recovery*, (B. 3.)

But it is ſufficient that the Tenant has the Freehold before the Return of the Writ of Entry, tho' he had not at the *Teſte*. (*Vide Com. Att.* 157.)

Or at any Time before Judgment, tho' it is after the Return of the Writ and Voucher. *Sho.* 347.

So a Common Recovery by a Tenant in Fee is a Bar to him and his Heirs, tho' it is not againſt the Tenant of the Freehold. *D. Ray.* 323.

So a Recovery by Huſband and Wife of the Wife's Land bars them and their Heirs. *Pr. Reg.* 490. *Cro. Car.* 389.

So a Recovery by *Ceſtuy que Truſt* in Tail bars the Eſtate-tail in Equity, tho' there be not a legal Tenant of the Freehold. *Vide Chancery*, (4 S. 4.)

(3 A. 4.) Of what Things.

A Writ of Entry lies of all Things demandable in a *Præcipe*. *Vide Weſt. Symb.* 2 *Pt.* 77. *a.*

[Of an Advowſon in groſs, and one Acre of Land, *ſur diſſeiſin in le Poſt*. *Bayley* v. *Univerſity of Oxford*, *P.* 33 *G.* 2. 2 *Wilſ.* 116.]

But it does not lie of a Garden, Croft, or Cottage. 1 *Rol.* 2.

Nor *de Superiori Camera*. (*Vide Weſt. Symb.* 2 *Pt.* 77. *b.*)

Nor *de Stagno, Foſſato, Piſcariâ*. (*Vide ibidem.*)

Nor *de Communia Paſtur'*. (*Vide ibidem.*)

Nor of Services, as Homage, Fealty, *&c.* (*Vide ibidem.*)

Nor of Eſtovers, *Minerâ, Fodinâ, Mercatu*. (*Vide ibidem.*)

Nec de Selione, Bovatâ, or *Virgatâ Terræ*, for they are uncertain. (*Vide ibidem.*)

Nor

Nor ought to name the ſame Thing twice; for it will be *bis petit'*. (*Vide ibidem.*)

Nor *de Tenemento*. *Semb. Mo.* 691.

The Writ muſt deſcribe the Lands demanded in a *Vill*, Pariſh, or Hamlet. *Hut.* 105.

Or in a Place known out of the *Vill*, Pariſh, or Hamlet. *Hut.* 105. 2 *Mod.* 49.

As within the Liberty of *S.* for this is in the Nature of a Place known, and it will be good for Lands in a *Vill* within the ſame Liberty. *R.* 2 *Mod.* 48.

But if it mentions a *Vill*, and a Hamlet within the ſame *Vill*, it is bad. (*Vide Weſt. Symb.* 2 *Pt.* 77. *b.*)

Or a Place known within a *Vill* or Hamlet. *Hut.* 105.

So, if it is agreed to have a Recovery of *Southwick* Marſh in *Cambey* Iſland in the Pariſh of *N.* and the Recovery is of Lands in *A. B.* and *Cambey*, omitting *N.* the Land in *N.* does not paſs, for *Cambey*, tho' it is a Place known, is within ſeveral Pariſhes. *R. Hut.* 105.

Yet, if a Recovery be of a Manor, this extends to a Manor in Reputation. *Cont. Noy* 7.

And to Land reputed of the Manor; if, by the Indenture to lead the Uſes, it was intended to be conveyed. *R.* 1 *Vent.* 51, 52. 1 *Sid.* 190.

So, if the Recovery is of Land in *A.* and there is a Pariſh and a *Vill* in it called *A.* and by the Indenture it appears, that the Recovery was intended of the Land in the Pariſh of *A.* it ſhall be good for Lands in the Pariſh. *R. Mod.* 250. 2 *Mod.* 233. 2 *Vent.* 31.

(3 A. 5.) **Count.** When a common Recovery is ſuffered, the Demandant counts, and the Defendant makes Defence as in an adverſe Action.

(3 A. 6.) **Vouchers.** If the Recovery is upon double Voucher, the Tenant vouches the Tenant in Tail, or him who is intended to be barred by the Recovery, and prays that he may be ſummoned.

When the Vouchee appears, the Demandant ſhall count againſt him, and he vouches the common Vouchee.

And in a Writ of Entry *Sur Diſſeiſin in le Poſt*, any one may be vouched, and he need not be within the Degrees.

The Vouchee muſt appear either by Attorney, or in Perſon. 1 *Leo.* 86.

And regularly, when he appears by Attorney, he muſt acknowledge his Warrant, and the Day of the Caption ſhall be returned. *Vide ante*, (3 A. 2.)

And the Warrant of Attorney and *Dedimus Poteſtatem* (if it is acknowledged upon a *Dedimus Poteſtatem*) ought regularly to be dated after the Summons *ad Warrantizand'*.

Yet, if they are teſted before the Summons, it will be good. *R.* 1 *Lev.* 130. 1 *Sid.* 213. *Ray.* 70.

Or the Warrant of Attorney is teſted after Appearance; for it ſhall be intended, that he appeared without Proceſs, as he may. *R.* 1 *Sid.* 213. *Ray.* 70, 96.

And, if there be a Writ of Summons, he may afterwards appear by Attorney, or in Perſon. *R.* 1 *Leo.* 86.

But if there is not a Writ of Summons, he cannot appear by Attorney. *R.* 1 *Leo.* 86.

Yet, if the Appearance by Attorney is entred by the Court without Summons, it is well. *R.* 1 *Leo.* 291.

So, if the Vouchee makes a Warrant of Attorney, and dies in the Morning of the firſt Day of the Term, and the Recovery paſſes the ſame Day, it will be good. *R.* 1 *Co.* 93. 106. *b.* *Mo.* 136.

But if the Vouchee, after the Warrant of Attorney made, dies before the Term, it will be Error. *D.* 2 *Vent.* 90.

And in ſuch Caſe the Court will ſtay the Paſſing of the Recovery. *R.* 2 *Vent.* 90.

[The

[The Death of the Vouchee before Judgment is Error, and may be assigned as such. *Sheepshanks* v. *Lucas*, *M.* 31 *G.* 2. 1 *B. M.* 410.]

[If the Vouchee dies six Days before the Return of the Writ of Summons, it is Error, and the Judgment cannot be made good by Relation to the first Day of Term; and tho' it appears on the Face of the Record, that the Vouchee appeared by Attorney at the Return of the Writ of Summons, yet Plaintiff is not estopped to assign it for Error, for it is collateral Matter, and not contrary to the Record. *Wynne* v. *Wynne*, *M.* & *H.* 17 *G.* 2. *Wilf.* 35, 42.]

[If the Writ of Summons is returnable at a Return within the Term, the Essoin-day of which is a *Sunday*, and on that *Sunday* the Vouchee dies, the Recovery is bad; for the Judgment cannot relate to any Day prior to the Return, and Judgment cannot be given on a *Sunday*. *Swann* v. *Broome*, *M.* 5 *G.* 3. 3 *B. M.* 1595. Affirmed (on the Opinion of *all* the Judges) in the House of Lords, 2d *May*, 1766.]

(3. A. 7.) Judgment and Execution.

After an Imparlance allowed and Default of the Common Vouchee, there shall be Judgment against the Tenant, and that he recover in Value against the Vouchee, and he against the Common Vouchee. *Vide West Symb.* 2 *Pt. Tit. Recoveries.*)

After Judgment an *Habere facias Seisinam* shall be awarded.

Which shall be tested upon the Day of the Return of the Writ of Summons, or (if there was no Summons) of the Writ of Entry. (*Vide West. Symb.* 2 *Pt.* 77. *b.*)

And it shall be returnable *indilate*, or at a Day certain. (*Vide Com. Att.* 157.)

Upon which the Sheriff returns, that he delivered Seisin. (*Vide West. Symb.* 2 *Pt.* 77. *b.*

The Writs of Summons and of Seisin, as well as the Writ of Entry, shall be filed with the *Custos Brevium.* (*Vide West. Symb.* 2 *Pt.* 77. *b.*)

If Tenant in Tail suffers a Recovery the Recoverors are not in Possession till Execution sued by a Writ of Seisin.

Tho' he had made a Lease for Years, and the Recovery was of the Reversion. *R.* 1 *Co.* 94. *a.* 106. *a.*

But Execution may be sued out, tho' the Tenant in Tail dies before the Recovery executed. *Co. Lit.* 361. *b.* *R.* 1 *Co.* 94. *a.* 106. *a.* *Mo.* 137.

And if Execution is sued and returned upon Record, it is well, tho' Seisin was not actually given, nor the Recoveror entred. *Dub.* 2 *Leo.* 48.

By the *St.* 23 *El.* 3. The Writs of Entry and Summons, and Warrants of Attorny, may be inrolled, *&c.*

And no Recovery shall be reversable for false *Latin*, Rasure, Interlining, Misentring the Warrant of Attorny, Misreturning or Not-returning of the Sheriff, or other Want of Form.

How Error shall be sued to reverse a Common Recovery, *Vide Th. Br.* 99, 100, *&c.*

(3 A. 8.) How a Recovery shall be pleaded.

A Common Recovery is a Record, and must be pleaded intire. *Hob.* 24.

So, if a Common Recovery is pleaded, it must be shewn to be a good Recovery. *Vide how pleaded*, *Lut.* 833, 1550, 963.

He must plead that the Recovery was executed, for till Execution he was seised in Tail as before. *R. Jon.* 10. *Lut.* 1550. *R. cont. but Lev. makes a Quære*, 2 *Lev.* 31.

And therefore, if he says That a Recovery was had *de Tenementis prædict'*, it is bad; for he ought to shew that it was by such Names, of which a *Præcipe* lies. *R. Mo.* 691.

So, if he pleads that *A.* being seised in Tail. a *Præcipe* was brought against *B. adtunc Tenen' liberi Tenementi*, without shewing how he had the Freehold, it is bad. *R.* 1 *Mod.* 218. 2 *Mod.* 70. *Semb. cont. Lut.* 1549.

Or that *A.* being ſeiſed for Life, Remainder to *B.* in Tail, a Recovery was had againſt *B. tunc tenen' Liberi Tenementi, &c.* 3 *Co.* 59. *a.*

So, if he ſays that *Caſtuy que Uſe* entred *ſuper Recuperationem prædictam*, and was ſeiſed in Fee, it is bad; for he ought to ſhew Entry or Execution by Force of the Recovery, and Seiſin by Force of the *St.* 27 *H.* 8. 10. *R. Jon.* 10.

[If a ſpecial Verdict finds a common Recovery, but does not find Writ of Seiſin or Execution, no Advantage can be taken of the Recovery; nor ſhall a *Venire facias de novo* go, tho' there was in Fact a Writ of Seiſin and a Return, as appears by a Verdict in another Cauſe. *Lewis* v. *Witham*, *P.* 16 *G.* 2. *Str.* 185. Affirmed on Error in Parliament, by the unanimous Opinion of *Hardwicke*, C. and all the Judges. *P.* 17 *G.* 2. *Wilſ.* 48.]

(3 B) Proceeding in Error.

(3 B. 1.) In what Court it ſhall be brought.

(3 B. 1.) When in the ſame Court.

ERROR ſhall be brought in the ſame Court, where the Judgment was, or in another Court.

Error may be in the ſame Court, where the Judgment was given, when the Error is not aſſigned for any Fault in the Court, but for ſome Defect in the Execution of Proceſs. 1 *Rol.* 746. *l.* 6. *Yel.* 157. *F.N.B.* 21. *I.*

So for Default of the Sheriff or other Officer upon an irregular Proceſs: As, if the Defendant is outlawed upon an *Exigent* awarded before a *Pluries Capias*, or upon a *Capias ad ſatisfaciendum* where no *Capias* lies in Proceſs. 7 *H.* 6. 28. *b.* *R. Dy.* 196. *a.* 1 *Rol.* 746. *l.* 15, *&c.*

So, for Miſpriſion of the Clerk: As, for falſe *Latin*, *&c.* 1 *Rol.* 746. *l.* 9. *F.N.B.* 21. *I.*

So, for Default in Execution. *R.* 1 *Rol.* 746. *l.* 11.

So, for Error in Fact: As, that the Defendant appeared by Attorny, being an Infant; that the Plaintiff was a *Feme Covert*: or died before Iſſue, *&c.* *R.* 1 *Rol.* 747. *l.* 5, 20.

And for Error in Fact, it muſt be in the ſame Court. 1 *Sid.* 208. except where it was in the *Exchequer*. *R.* 3 *Lev.* 38. *Vide Poſt*, (3 B, 4.)

[Error *Coram Vobis* lies not on a Judgment after Affirmance in Exchequer-chamber. *Lambell* v. *Pretty John*, *H.* 12 *G.* *Str.* 690.]

So in Criminal Caſes upon Indictment, Error may be in *B. R.* upon a Judgment in the ſame Court, as well for Error in Law as for Error in Fact. *R.* 1 *Lev.* 149.

But ſemb. that it was only for Error in Fact. 1 *Sid.* 208.

But Error in the ſame Court, which *Coram vobis reſidet*, does not lie for Default of the Court itſelf: As, if Error be aſſigned for Matter in Law. 1 *Rol.* 746. *l.* 4. *R. Mo.* 186.

Or for Default *in Adjudicatione Executionis*. *R.* 1 *Rol.* 746. *l.* 55.

Or for Default of a Continuance. *R. Dy.* 196. *a.*

[If Writ of Error be quaſhed for any Fault but Variance, Error *Coram Vobis* lies. *Cooper* v. *Ginger*, *M.* 11 *G.* *Str.* 606. *Ld. Raym.* 1403.]

(3 B. 2.) When in *C. B.*

Error lies in *C. B.* of a Judgment before Juſtices of Aſſiſe, 1 *Rol.* 745. *l.* 39. *But it was R. cont. Dy.* 250. 1 *Leo.* 55. 3 *Leo.* 159.

So, of a Judgment in *London*, or other inferior Court. *F.N.B.* 20. *D.*

So, a Writ of falſe Judgment lies in *C. B.* as well as in *B. R.* 2 *Inſt.* 138.

(3 B. 3.) In *B. R.*

Error lies in *B. R.* of a Judgment in *C. B.* 1 *Rol.* 744. *l.* 46. 4 *Inſt.* 22.

Or of a Judgment upon the Plea-Roll in *Chancery*. *Dy.* 315. 1 *Rol.* 744. *l.* 55. 4 *Inſt.* 80. *Pl. Com.* 393. *a.*

Or in a County *Palatine*. *Dy.* 321. *Dav.* 62. 1 *Rol.* 745. *l.* 10. 21 *H.* 7. 33. *b.*

Or in the *Cinque Ports*. *Dub.* 1 *Sid.* 166. *Vide cont. infra.*

So, of a Judgment in *Ireland*. 1 *Rol.* 745. *l.* 22. *Dav.* 62. 7 *Co.* 18. *a. Vau.* 290, 298. *F.N.B.* 24. *C.* 3 *Mod.* 170.

Or in any of the King's Dominions: As, *Calais, &c. Vau.* 290, 402. *Cont. Kel.* 202. *b. Acc.* 4 *Inſt.* 282. *Cont.* 21 *H.* 7. 33. *b.*

So in *Wales*. *Cont.* 1 *Rol.* 745. *l.* 27, 30. 21 *H.* 7. 33. *b. By the St.* 28 *H.* 8. 3. * In a real Action, tho' Error in a perſonal Action is before the Preſident and Council of the *Marſhes*. *Mo.* 248.

So, in an Ejectment in *Wales*; tho' it is a mixt Action. *R. Mo.* 248.

So Error lies in *B. R.* upon a Judgment againſt a Peer attainted before the Lord High Steward. *Per Twiſd.* 1 *Sid.* 208. 1 *Lev.* 149.

And upon a Judgment at the Seſſions of *Old Baily* by Commiſſion. 2 *Leo.* 107.

So, upon a Judgment in *London* before the *Mayor*, upon an Information. 2 *Cro.* 538. *Vide infra.*

But Error does not lie in *B. R.* of a Judgment in the *Exchequer*. 4 *Inſt.* 71. 106.

Or of a Judgment before Juſtices in *Eyre*. 1 *Rol.* 745. *l.* 35.

Or of a Judgment in *London*. 2 *Leo.* 107. *Vide ſupra.*

Or a Judgment in the *Cinque Ports*. 1 *Rol.* 745. *l.* 5. *R. Dy.* 376. *Dub.* 1 *Sid.* 166. *Vide ſupra.*

Or a Judgment in the *Stannaries*. 1 *Rol.* 745. *l.* 20.

Nor upon a Judgment in a Summary Way before the Cenſors of the College of Phyſicians. *R.* 1 *Sal.* 144.

Nor upon a Judgment in *B. R.* upon a Caſe ſtated ſent to them by *Chancery*. *Mo. Ca. in Eq.* 5.

*(This Statute is mentioned in *Cay* as expired, and *Qu.* if it ſhould not be 27 H. 8. 26.)

By the *St.* 27 *El.* 8. On Judgment in *B. R.* in Debt, Detinue, Covenant, Account, Action upon the Caſe, Treſpaſs, or Ejectment, the Party grieved may remove the Record into the *Exchequer*, before the Juſtices of *C. B.* and Barons of the *Exchequer*, who, or ſix of them at leaſt, may affirm or reverſe the Judgment, but not for Want of Juriſdiction in *B. R.* or Want of Form, *&c. Lev. Ent.* 82. (3 B. 4.) In the *Exchequer*. *Vide Courts*, (D. 6.)

And this extends to Debt upon the *St.* 2 *Ed.* 6. 13. for not ſetting out his Tithes. *Cro. Car.* 142. 1 *Sid.* 240.

And Debt upon the St. of Uſury. *Dub.* 1 *Sid.* 240. *D. cont.* 5 *Mod.* 230.

Tho' the Action be by the King and Party. *D. Cro. Car.* 142. *R. Ray.* 275. *Cont.* 1 *Vent.* 49.

And Error lies in the *Exchequer* for Error in Fact, as well as for Error in Law. *R. Cro. El.* 731. *R.* 2 *Cro.* 5. *R. Hob.* 5. *Per* 3 *J. Berkley cont. Cro. Car.* 514. *Vide infra.*

And it ſhall be tried by *Niſi prius* out of the *Exchequer*. *Cro. Car.* 514.

So for Error in Proceedings in *B. R.* 5 *Co.* 28. *a.*

But Error does not lie by this Statute in the *Exchequer*, when the Suit is commenced in *B. R.* by Original. *D.* 1 *Sand.* 346. 1 *Sid.* 424.

Nor upon a Judgment in *B. R.* in a Writ of Error. 2 *Bul.* 162.

Nor where the King is a Party: As. in an Action by *qui tam, &c. Ley* 82. *(Vide ſupra.)*

Nor in an Action not mentioned in the Statute, for it ſhall not be extended by Equity: As, in *Reſcous*, tho' it is of the Nature of Treſpaſs. *R.* 2 *Cro.* 171.

Nor in *Replevin*. *Cro. Car.* 142. 2 *Rol.* 140.

In *Scandalum Magnatum*, for it is not a mere Action upon the Caſe, but founded upon the *St.* 2 *R.* 2. *R. Cro. Car.* 142. *R.* 1 *Sid.* 143. *Jon.* 194, 195. 1 *Vent.* 49. *R. Ley* 82. *Jon.* 423.

[Error does not lie in the Exchequer upon an Award of Execution in a *Scire facias* only, but the Writ muſt alſo include the Judgment in the former Action; no

not founded on the Merits of the Cauſe is not within *Stat.* 27 *Eliz. c.* 8. *Crow* v. *Maddock, M.* 12 *G.* 2. *Andr.* 287.]

Nor in a *Scire facias* againſt Bail *R. cont. Cro. El.* 730. *R. acc.* 2 *Cro.* 171. *Yel.* 157. *Hob.* 72. 2 *Cro.* 384. *R. acc. Cro. Car.* 300.

Or, a *Scire facias* againſt an Executor or Adminiſtrator upon a Judgment in Debt. *Adm cont.* 2 *Cro.* 186. *Dub. Cro. Car.* 286. *Semb. acc. per* 3 *J. Cro. cont. Cro. Car.* 464. *Cont. per Hale, Mod.* 79. and *per Holt,* 1 *Sal.* 263.

Nor in a *Scire facias* upon a Judgment in Debt or other Action named in the *St.* 27 *El.* after an Affirmance of the firſt Judgment in the *Exchequer*. *R.* 5 *Mod.* 230. 1 *Sal.* 263.

So Error does not lie in the *Exchequer* for Error in Fact, except ſuch by which the Writ abates. *R. Hob.* 5. *R.* 2 *Lev.* 38. *Vide ſupra.*

So, if a Writ of Error in the *Exchequer* is diſcontinued, after the Record removed, Error does not lie, which *Coram vobis, &c.* but there muſt be a new Writ of Error. *R. Jon.* 14. *Semb. cont.* 2 *Cro.* 135. *R. acc.* 2 *Cro.* 384, 620.

(3 B. 5.) In the Exchequer Chamber.

By the *St.* 31 *Ed.* 3. 12. On Complaint of Error in the *Exchequer*, the Lord Chancellor and Lord Treaſurer ſhall cauſe the Record to come before them, and taking the Juſtices and other Sages as to them ſeemeth, and calling the Barons to hear their Informations, and the Cauſes of their Judgments, ſhall examine the Buſineſs, and if they find any Error amend the Rolls, and ſend them to the *Exchequer, &c.* for Execution.

Before, Error in the *Exchequer* was examined in Parliament, or before ſpecial Commiſſioners. 4 *Inſt.* 105. *Vide Parliament,* (L. 6.)

The Chancellor and Treaſurer are the Judges here, and Judgment ſhall be entred purſuant to their Sentence, tho' the other Juſtices differ in Opinion. 4 *Inſt.* 105. *R.* 7 *W.* 3. *inter Att. Gen. and Hornby.* 5 *Mod.* 42. *R.* 8 *H.* 7. 13. *a.*

And therefore, if there is no Chancellor or Treaſurer, Error cannot be brought. *Dub. Hard.* 147.

But by the *St.* 16 *Car.* 2. 2. If the Chancellor or Treaſurer, or either of the Chief Juſtices, be preſent, Error ſhall not abate or be diſcontinued; but no Judgment ſhall be given unleſs both Lord Chancellor and Treaſurer be preſent; or by the *St.* 20 *Car.* 2. 4. If Lord Keeper be preſent in the Vacancy of Lord Treaſurer.

The Writ of Error ſhall be directed to the Treaſurer and Barons; for the Record is in their Cuſtody. 4 *Inſt.* 105. *Sav.* 36. 1 *Co.* 11.

And it lies upon a Judgment, where the Trial is by Records, as well as upon a Judgment by Confeſſion, upon a Verdict or a Demurrer. *R.* 4 *Leo.* 104, 105.

So it will be Error, if the Chancellor and Treaſurer do not call in the other Juſtices. *Semb.* 8 *H.* 7. 13.

Error does not lie in the Exchequer Chamber on an Award of Execution only. *Bertie* v. *Clutterbuck, M.* 12 *G.* 2. *Str.* 1102.

(3 B. 6.) In Parliament, *&c.* *Vide Parliament,* (C. 1, &c.)

Error of a Judgment in *B. R.* lies in Parliament. 4 *Inſt.* 21.

As well for Error in a Judgment there given upon a Writ of Error, as in an Original Cauſe. 1 *Rol.* 745. *l.* 25. 2 *Sand.* 214. *Ha. J. P.* 21. *Godb.* 247.

So tho' Error may be in the *Exchequer*, by the *St.* 27 *El.* 8. in ſeveral Caſes; yet it may be in Parliament *immediate*. *R. Ca. in Parl.* 56.

Or after Judgment in the *Exchequer*. *Ca. Parl.* 110. And this by the *St.* 27 *El.* 8.

So Error lies in Parliament upon a Judgment in the *Exchequer* Chamber. *Ca. Parl.* 12, 58.

But upon an Original Judgment in the *Exchequer*, Error does not lie in Parliament, before it is affirmed in the *Exchequer* Chamber. *Ca. Parl.* 56. *Sal.* 511.

So upon a Judgment in *Chancery*, it lies in Parliament as well as in *B. R. D.* 37 *H.* 6. 14. *b.* 1 *Rol.* 745. *l.* 4.

So

So upon a Judgment before Juſtices in *Eyre*. 1 *Rol.* 745. *l.* 35.

Or a Judgment before Commiſſioners at *St. Martins*. 2 *Sand.* 228.

So Error lies in Parliament upon an Attainder for Treaſon; for tho' the *St.* 33 *H.* 8. 20. ſays, That Judgment of Attainder by Common Law ſhall be of as good Force, as if done by Authority of Parliament, this ſhall be intended of a lawful Attainder. *Ha. P. C.* 19.

So upon a Judgment for the King as well as for a common Perſon. *Ha. P. C.* 22.

So upon a Judgment in Appeal by which the Defendant was acquitted. *H. Parl.* 20.

But it does not lie in Parliament upon a Judgment in *C. B.* before it is affirmed in *B. R. H. Parl.* 20, 21.

Error of a Judgment in the *Huſtings* of *London* lies before Commiſſioners at *St. Martin's*. *F. N. B.* 23. *E.* 1 *Rol.* 745. *l.* 50. 4 *Inſt.* 247. 1 *Lev.* 309. 2 *Sand.* 228. In other Courts.

Of a Judgment before the Sheriffs of *London*, lies in the *Huſtings* there. *F. N. B.* 22. *H.* 4 *Inſt.* 247, 8.

Of a Judgment in the *Cinque Ports*, lies before the Warden of the *Cinque Ports* at *Shepway*. 1 *Rol.* 745. *l.* 7. *Vide Franchiſes*, (E. 2.)

Of a Judgment in the Stanneries an Appeal lies to the Warden of the Stanneries, and from him to the Prince, or, if no Prince, to the King's Council. 1 *Rol.* 745. *l.* 20.

(3 B. 7.) Upon what Judgment.

Error lies of any Judgment in a Court of Record.

Tho' it be void, as being out of the Juriſdiction in an inferior Court. 1 *Rol.* 744. *l.* 30.

Tho' it be upon a Writ of falſe Judgment; for the laſt Judgment is of Record. 1 *Rol.* 744. *l.* 27.

It lies upon a Judgment for Coſts upon a Nonſuit. 1 *Rol.* 744. *l.* 23. [*Newell* v. *Pidgeon*, *M.* 6 *G. Str.* 235.]

Upon a Judgment in *Scire facias* upon a Statute or Recognizance. *Dy.* 315. 1 *Rol.* 744. *l.* 40. 751. *l.* 45.

Upon a Judgment by any Judge or Court of Record, which acts according to the Courſe of the Common Law, tho' newly erected by Act of Parliament. *R.* 1 *Sal.* 263.

Upon a Judgment on an Indictment. *Adm.* 1 *Sal.* 266.

[If Defendant is found not guilty as to Part, there muſt be a Judgment for him as to that Part, or Error lies. *Smith* v. *Tuller*, *M.* 1 *G.* 2. *Str.* 786.]

But Error does not lie upon a Decree in *Chancery*. 37 *H.* 6. 14. *b.* 1 *Rol.* 744. *l.* 44.

So it does not lie upon a peremptory *Mandamus*. *R. in B. R. and aff. in Parliament*, 2 *Mod. Ca.* 27. [*Rex* v. *Dean and Chapter of Dublin*, *M.* 9 *G. Str.* 536.]

[Nor on a *Mandamus*, when the Return is allowed. *Rex* v. *Hearle*, *P.* 11 *G. Str.* 625.]

Nor upon an Order by Juſtices of the Peace, tho' they are Juſtices of Record. 1 *Rol.* 744. *l.* 48. *Dub.* 2 *Jon.* 167.

Nor upon Refuſal of a Prohibition in *B. R. Semb.* 1 *Sal.* 136.

Nor upon an Order, *&c.* of a Juriſdiction newly erected, which does not proceed according to the Common Law. 1 *Sal.* 263.

Nor upon a *Habeas Corpus* denied. *Dub. Sal.* 504. *D.* 2 *Mod. Ca.* 29.

Nor for a Matter of Fact, which does not appear upon the Record, As, if a Statute *Staple* is not ſealed. *R. Cro. El.* 233.

Nor does it lie upon an Interlocutory Judgment before the Final Judgment: As, upon a Judgment in Partition, *Quod Partitio fiat*. *Co. Lit.* 168. *a.* 11 *Co.* 40. *b. R.* 2 *Rol.* 126.

Upon a Judgment *Quod computet* in Account. *R.* 11 *Co.* 38. *b.* 2 *Cro.* 356. *R.* 2 *Cro.* 324. 1 *Rol.* 750. *l.* 5. 2 *Bul.* 104.

Upon a Judgment in Treſpaſs, &c. by Default, before a Writ of Inquiry returned and final Judgment thereon. *R.* 1 *Leo.* 193.

Not does it lie upon a Judgment for Part, till the whole Plea is determined: As, in a Suit againſt Several, if there is Judgment againſt One, Error does not lie till Judgment againſt all the Defendants. 11 *Co.* 39.

Nor, if the Judgment is for Part of the Demand, till Judgment for the Whole. 11 *Co.* 39. *b.* *R. Dy.* 291. *b.*

Yet, if the Party dies, ſo that Nothing more is done, Error lies for the Party grieved by the Award or Interlocutory Judgment. 11 *Co.* 41. *a.*

So, in Ejectment, Error lies upon the Judgment for the Term, before a Writ of Inquiry. *R. Lat.* 212.

Or if there is a Suit againſt Several upon ſeveral Originals, Error lies upon a Judgment againſt One. 11 *Co.* 41. *a.* 2 *Rol.* 126.

So, it lies after final Judgment, before Execution or Writ of Inquiry. 1 *Rol.* 751. *l.* 13, 20. 750. *l.* 35, 40, 50. 749. *l.* 45, 52.

(3 B. 8.) At what Time it ſhall be ſued.

And therefore, if a Writ of Error is ſued out before final Judgment, tho' a *Mittit'* is entred upon the Roll, and the Record certified; yet it is not thereby removed. *R.* 11 *Co.* 41. *b.*

[If the Writ of Error is returnable before Judgment, it ſhall be quaſhed. *Vice* v. *Burton*, *H.* 4 *G.* 2. *Str.* 891.]

Yet, after Judgment ſigned, Error may be ſued before Entry upon the Roll; for it is not entred till the Vacation. *R.* 1 *Rol.* 750. *l.* 25.

So, it may be ſued, returnable in *B. R.* of the ſame Term, in which Judgment was given in *C. B.* *R.* 1 *Sid.* 104.

Tho' it is teſted before Judgment given, 1 *R.* 3. 4.

And for Error in Proceſs, which *Coram Vobis*, &c. it muſt be ſued the ſame Term in which Judgment was given. *Per Williams*, *Yel.* 157.

[Altho' Error ſhould be ſued within 20 Years after the Judgment, yet the Court will not quaſh it, if brought 29 Years after, becauſe it would deprive him of replying the Exceptions in the Statute. *Higgs* v. *Evans*, *T.* 3 *G.* 2. *Str.* 837.]

(3 B. 9.) By whom it ſhall be ſued.

By or againſt whom Execution ſhall be. *Vide Execution*, (E.—F.)

All Parties againſt whom Judgment is given ought regularly to join in Error. *R.* 3 *Mod.* 134. *Carth.* 7. 2 *Mod. Ca.* 305.

Tho' ſome get Nothing by the Reverſal, they muſt join for Conformity. 1 *Rol.* 747. *l.* 35.

As a Biſhop, in *Quare Impedit*, who claims Nothing but as Ordinary. *R.* 3 *Leo.* 176. *Cro. El.* 65.

[If Judgment is againſt two, and one only brings Error, it is bad, even tho' the other is dead, if it does not appear; but if it appears any where that the other Defendant is dead, the Survivor may bring Error without being Executor of the Deceaſed. *Brewer* v. *Turner*, *M.* 6 *G.* *Str.* 233.]

[If Judgment is againſt two, Writ of Error *ad grave Dampnum* of one only will not lie. *Cooper* v. *Ginger*, *M.* 11 *G.* *Str.* 606. 2 *Ld. Raym.* 1403. *Radcliffe* v. *Burton*, *T.* 8 *G.* 2. *B. R. H.* 135.]

[The Writ of Error muſt deſcribe the Suit by the Names of all the Parties, tho' *ad grave Damnum* of thoſe only who bring Error. *Lady Caſs* v. *Title*, *H.* 12 *G.* *Str.* 682.]

[If Indictment ſets forth, that the *Inhabitants of ſuch Part* of three Pariſhes as the Way lies through, are bound to repair, and Writ of Error is of a Judgment againſt the *Inhabitants in general*, *ad grave Damnum* of them, it ſhall be quaſhed. *Rex* v. *All Saints Derby*, *P.* 12 *G.* 2. *Str.* 1110.]

So all Executors, againſt whom the Judgment was, tho' one only appeared. *R.* 1 *Sal.* 312.

[If in Action againſt three Executors, one pleads *plene adminiſtravit*, generally, and there is Judgment againſt him *de Aſſets in futuro*; and the other two plead Judgments and *plene adminiſtravit ultra*, and a Verdict againſt them; they muſt all three join in Error. *Vavaſor* v. *Faux*, *P.* 18 *G.* 2. *Wilſ.* 88.]

But if one makes Default, he may be ſevered. *Mod. Ca.* 40.

[If two Executors join in a Writ of Error, and one of them will not aſſign Errors, the Court will give the other Time to ſummon and ſever. *Freſcobaldi* v. *Kinaſton*, *M.* 1 *G.* 2. *Str.* 783.]

And a Party may have Error, tho' he was not an original Party: As, Tenant by *Voucher* or *Reſceipt*. 1 *Rol.* 747. *l.* 38.

So Error may be by him, who is Privy: As, by the Heir. *F. N. B.* 21. *N.*

And he need not ſay, how Heir. *R.* 2 *Cro.* 160.

By an Executor, or Adminiſtrator. *F. N. B.* 21. *N.*

So Error upon an Attainder for Treaſon or Felony may be brought by an Executor, as well as by an Heir. *R. Sho.* 13. 1 *Sal.* 295. *R.* 1 *Leo.* 325.

So by a Privy in Eſtate: As, by him in Reverſion or Remainder after a Term for Life or Years, when the Term is determined. 1 *Rol.* 748. *l.* 7. *Dy.* 16.

And by the *St.* 9 *R.* 2. 3. While the Eſtate for Life or Years continues. 3 *Co.* 4. *a.*

So, by him in Reverſion after an Eſtate Tail, after the Entail is determined. *R.* 3 *Co.* 4. *a.* 1 *Rol.* 747. *l.* 8.

Tho' it be upon a Fine by Tenant in Tail; for thereby the Remainder was diſcontinued. *R.* 2 *Jon.* 182. *Ray.* 461. *Vide Fine*, (H. 4.)

[Tenant in Remainder may bring Error againſt a common Recovery where the Tenant in Tail, *Vouchee*, died before the Judgment; and he need not ſet out a complete Title, but only ſhew the Connexion and Privity between him and the Perſon againſt whom the Recovery was had. *Sheepſhanks* v. *Lucas*, *M.* 31 *G.* 2. 1 *B. M.* 410.]

But it muſt be by ſuch Privy as has Benefit by the Reverſal: As, Error upon a Judgment againſt a Tenant to him and his Heirs Females ſhall be by the Daughter, who is Heir to the Special Tail. 1 *Rol.* 747. *l.* 30. *Dy.* 90. *a.* *F. N. B.* 21. *M.*

Upon a Judgment for Land of the Nature of *Borough Engliſh*, it ſhall be by the youngeſt Son. *F. N. B.* 21. *L.*

It muſt be by him in the immediate Remainder. *R.* 5 *Mod.* 396.

And if the Remainder was not executed, the Plaintiff in Error ought to make himſelf Heir to him, who had in him the Eſtate executed. *Dy.* 90. *a.*

If an Annuity in Fee be recovered againſt the Heir upon the Grant of his Anceſtor, the Adminiſtrator of the Heir ſhall not have Error. *R.* 1 *Rol.* 749. *l.* 35.

And a Man, who is neither Party nor Privy, ſhall not have Error. 1 *Rol.* 747. *l.* 33.

As, if Money is taken in the Hands of *B.* by foreign Attachment, *B.* ſhall not have Error to reverſe the Judgment. 1 *Rol.* 747. *l.* 50.

If the Tenant alien *pendente Lite*, the Alienee ſhall not have Error. 1 *Rol.* 748. *l.* 41.

Nor an Alienee of Lands after a Statute or Recognizance acknowledged. *Semb.* 1 *Rol.* 748. *l.* 15. *Cont. F. N. B.* 22. *B.*

Nor Bail, of a Judgment againſt the Principal. *R.* 1 *Rol.* 749. *l.* 5. 20. *Cro. Car.* 300. *Per* 2 *J. Cro. Car.* 481. *R. Hob.* 72. 2 *Cro.* 384. *R. Cro. Car.* 561. *R.* 1 *Lev.* 137.

Tho' joined with the Principal. *R. Cro. Car.* 408, 575. 1 *Lev.* 137. *R. Godb.* 440.

So a Stranger cannot aſſign Error in Arreſt of Judgment upon an Indictment. 1 *Sal.* 60.

So, if there are five Defendants and three are acquitted, Error muſt be by the other two only. *R.* 2 *Cro.* 138.

So a Reverſal by him, who ought not to have Error, may be reverſed. *R.* 5 *Mod.* 396. *R.* 2 *Cro.* 138.

[It

[It cannot be taken out in the Name of the caſual Ejector. *George* v. *Wiſdom*, *H.* 32 *G.* 2. 2 *B. M.* 756. *Barnes* 179.]

(3 B. 10.) Againſt whom it ſhall be ſued.

Error ought to be ſued againſt all the Parties to the Recovery.

So againſt any, who was Party or Privy to the Judgment.

And if any who was Party, has now Nothing, yet he ſhall be named a Defendant in Error. *F. N. B.* 18. *I.*

So, in Error of a Judgment, which concerns Land, there ſhall be a *Scire facias* to the Tertenant before he can be ouſted. *Dy.* 321. *Ray.* 17.

And this uſually iſſues before the *Scire facias ad audiend' Error'*. *Dy.* 321.

And it is now the Courſe of the Court to have a *Scire facias* againſt the Heir and Tertenants. *R.* 3 *Mod.* 274.

Tho' the Heir is within Age. 3 *Mod.* 274.

So in Error upon a Fine and Common Recovery. *R. Carth.* 112. *Skin.* 273.

So in Error upon a Judgment for the King in any Action by *qui tam*, *&c.* there ſhall be a *Scire facias* againſt the Informer. *Sav.* 10.

[In Error to reverſe a Common Recovery (for the Death of the Vouchee before Judgment) *Scire facias*, or any Warning to the *Heir*, is not neceſſary. *Sheepſhanks* v. *Lucas*, *M.* 31 *G.* 2. 1 *B. M.* 410.]

(3 B. 11.) The Manner of ſuing Error.

To obtain a Writ of Error, the Attorney from the Dogget of the Prothonotary finds the Number of the Roll, and thereby finds the Roll in the Treaſury, of which he takes a Copy, and thereupon the Curſitor makes out a Writ of Error. *Vide Comp. Att.* 63.)

Several Writs of Error may be ſued at the ſame Time: As, one by the Tenant, another by the Vouchee. *F. N. B.* 21. *M.*

And it ſhall be ſued *ex Officio*, tho' it be againſt the King, without Petition. 1 *Sal.* 264. *Cont.* 1 *Ver.* 170, 175.

When the Writ of Error is made out, it ſhall be entred on the Remembrance of the Clerk of the Errors, who takes a Note for Bail, if Bail is required. (*Vide Com. Att.* 63.)

And then the Party and his Bail enter into a Recognizance before the Chief Juſtice, who ſubſcribes it. (*Vide Com. Att.* 64.)

In what Caſes Bail is required, and in what Manner it ſhall be given, *Vide Poſt*, (3 B. 12.)—*Vide Bail*, (G. 2.)—*Coſts*, (B.)

If Error is brought in Criminal Caſes, it muſt be allowed by the Attorney-General, for it is *Ex gratia*, and the *Chancery* will not direct it. *Eq. Ca. Ab.* 414.

But, if it is real Error, and the Attorney-General refuſes, there may be a Petition to the King. *Ibid.*

If Error is brought in Parliament, it ſhall not be allowed without the King's Warrant, for which five Pounds are paid, and four Pounds for the Writ. *Vide Intr.* 5. *Per Cook C. J. Godb.* 247. (*Vide Parliament*,) (L. 2.)

So Error upon an Attainder by Indictment ſhall not be allowed without a Petition to the King. *Per* 2 *J.* 1 *Rol.* 175.

So in every Caſe, where the King is Party, and the Error is in the Subſtance of the Judgment, and not in Proceſs, or a collateral Matter. *Sav.* 131.

But the Defendant ſhall not be diſcharged out of Cuſtody upon Bail, upon a Writ of Error in Parliament. 1 *H.* 7. 20. *a.*

If Error be of a Fine, *&c.* in a County *Palatine*; tho' it be returnable in *B. R.* yet the Court there may after reading the Writ, without *Scire facias* to the Defendant, or with it, reform manifeſt Error. *Dy.* 231. *a.*

And if the firſt Judgment be reverſed upon a ſpecial Writ of Error, both Judgments may be examined in *B. R.* *Ibid.*

If Error be upon an Indictment, the proper Courſe is to remove it by *Certiorari*, then to have Error, which *coram Nobis*, *&c.* and thereupon the Defendant in Error gives a Rule to aſſign Errors. 1 *Sal.* 266.

And

And if, upon ſuch Rule, the Plaintiff does not aſſign Errors, the Defendant may move for a peremptory Rule, and then, if he does not aſſign, he ſhall be non-ſuited, and the Defendant may take out Execution. 1 *Sal.* 266.

The Proceſs in Error ſhall be *Alias* and *Pluries*, and, if the Record is not then removed, an Attachment. *F. N. B*, 22. *G.*

The *Pluries* may be returnable in the ſame Court with the Writ of Error, or in *Chancery*. *Ibid.*

If it is returnable in *Chancery* and thereupon the Record certified there, the Chancellor with his own Hand may bring it to the Court, where Error was brought, without a Writ of *Mittimus*. *Ibid.*

[Proceedings ſhall not be ſtayed, becauſe the Chief Juſtice has not ſigned the Return. *Blackwood* v. *South-Sea Company*, *M.* 10 *G.* 2. *Str.* 1063. *B. R. H.* 344.]

[The Court will not *non proſ.* a Writ of Error brought contrary to Plaintiff's Undertaking, if it appears the Judgment and Undertaking were during his Minority. *Stern* v. *Bern*, *P.* 8 *G.* 2. *B. R. H.* 104.]

[If a Writ of Error returnable in Exchequer-chamber abates by Defendant's Death, the new Writ cannot be to the Exchequer-chamber, for only Tranſcript of Record is there, the Record is in the Exchequer; the Court will make a Rule for a *Remittitur* to be entered on the Record, with a Suggeſtion of the Death. *Rex* v. *Cotton*, *T.* 1751. 2 *Vezey* 288. *Parker* 112.]

[If Rule for better Bail is ſerved on a Servant of Plaintiff's Attorney on *Tueſday*, though it comes not to his Knowledge till *Saturday*, the Court will not then grant Time to perfect Bail, unleſs real Error can be ſuggeſted. *Handaſyde* v. *Morgan*, *T.* 2 *G.* 3. 2 *Wilſ.* 144.]

B. R. will oblige Plaintiff in Error in Parliament, upon a Judgment in Ejectment to enter into a Rule not to commit Waſte or Deſtruction pending the Writ. *Wharod* v. *Smart*, *M.* 6 *G.* 3. 3 *B. M.* 1823.]

[In Debt on Bond conditioned for Performance of Covenants, and Judgment by Default, although the Condition does not appear on record; yet, this being examinable by Affidavit, there ſhall be no Bail. *Barnes* 72.]

[Error is loſt, if not returnable before Death of Chief Juſtice; but Execution may not be taken without Leave of the Court. *Barnes* 201, 201, 201.]

(3 B. 12.) When it ſhall be a *Superſedeas*.

A Writ of Error being allowed (and Bail given, when Bail is required) it ſhall be a *Superſedeas* of any ſubſequent Execution. 1 *Sal.* 321.

And thereupon a *Superſedeas* may be ſued out and filed with the Sheriff, *&c.* *F. N. B.* 239.

So Error with Notice thereof ſhall be a *Superſedeas*, before the Writ allowed. 1 *Sal.* 321. 2 *Mod. Ca.* 130.

[It is a *Superſedeas*, tho' ſued out before Judgment. *Morfoot* v. *Chivers*, *T.* 11 *G.* *Str.* 631]

[It is *Superſedeas* only from Delivery to Clerk of Errors. *Barnes* 205, 209.

[Only from Allowance. *Barnes* 376.

In Error upon a *Quare Impedit*, there ſhall be a *Non moleſtand'* to ſtay Execution till Errors diſcuſſed. *Dy.* 76. *b.*

And, if Execution be afterwards done, it will be a Contempt. *R.* 2 *Bul.* 194.

[No Contempt is incurred by taking out Execution, till after Notice of Writ of Error. *Barnes* 376.]

So, if Execution be after a Writ of Error allowed, without Notice of it, Reſtitution ſhall be granted. *R.* 3 *Lev.* 312. 1 *Sal.* 321, 322.

Tho' the Writ of Error was not allowed till 24 *Oct.* and the Writ of Execution was teſted the 23d, for of Courſe Judgment is not ſigned till four Days after the Beginning of the Term, which was the 27th *Oct.* 3 *Lev.* 312.

[If Plaintiff defers ſigning Judgment till Error ſpent, and then brings Debt on Judgment, the Court will order new Writ of Error at Attorney's Expence. *Barnes* 250.]

[Execution after Error allowed, and Bail, is irregular, tho' the Writ of Error was returnable before Judgment ſigned, if it was ſigned the ſame Term, even tho' Error returnable the Eſſoin-day: not if ſigned in a ſubſequent Term. *Barnes* 260, 197, 198.]

[If there is Verdict againſt four Defendants, and Judgment by Default againſt a fifth, who brings Error, without Bail, Court will give Leave to take Execution againſt the four. *Barnes* 202.]

[A Certificate from Clerk of Errors that Bail is not put in, is not neceſſary before taking out Execution. *Barnes* 212.]

And a Writ of Error ſhall be a *Superſedeas*, tho' it be of a Judgment in a former Writ of Error, in which a *Superſedeas* was granted. *R. per* 3 *J. Co. cont.* 2 *Cro.* 341. *Godb.* 250.

Tho' the Record is not removed, but only a Tranſcript, to the Court where Error is brought. *R.* 2 *Cro.* 535.

Tho' no Notice of the Writ allowed. *R.* 2 *Mod. Ca.* 373.

So, if Judgment is affirmed, the *Superſedeas* continues till the Record is ſent back.

If Error is diſcontinued by the not Coming of the Juſtices. *R.* 6 *H.* 7. 15. *b.*

So, if the Plaintiff in Error is nonſuited, or diſcontinues, or Error abates. *R. Sho.* 404. 1 *Sal.* 261.

But if the Execution is executed before Error allowed, or Notice, there ſhall be no Reſtitution. 1 *Sal.* 321. *Mod. Ca.* 130.

Tho' it was returned or filed after Error notified. *Mod. Ca.* 130.

And if it is levied in Part, ſuch Part may afterwards be applied to the Debt. *R. Yel.* 6.

For the Sheriff may return the Goods, and afterwards upon a *Venditioni exponas* ſell them. *Yel.* 6. *Vide Execution*, (C. 6, 8.)

But without a *Venditioni exponas* the Sale will be void. *R.* 1 *Rol.* 894. *l.* 10.

[If Defendant is taken on *Ca. ſa.* and Bail in Error is afterwards perfected, he ſhall be diſcharged; but on a *Fi. ſa.* the Proceedings, ſo far as Sheriff has gone, muſt ſtand. *Barnes* 212.]

So, if a Writ of Error abates, a new Writ of Error in the ſame Court is no *Superſedeas*. *R.* 1 *Mod.* 285.

Nor Error in Parliament, and Errors aſſigned, if the Parliament be diſſolved. *R. Ray.* 5.

So, if Error is in Parliament, and it abates by Prorogation, tho' there is no Default of the Party, yet a new Writ of Error, returnable at the next Seſſions of Parliament, is no *Superſedeas*. *R.* 1 *Vent.* 31. 1 *Sid.* 413. 2 *Lev.* 93.

So, where the firſt Writ of Error is returnable at the next Seſſions of Parliament, it is no *Superſedeas* in reſpect of the Diſtance of the Return. *R.* 1 *Vent.* 266. Where a Term intervenes. *Semb.* 3 *Mod.* 125. 2 *Leo.* 120.

[Writ of Error in Parliament is no *Superſedeas*, if it be not tranſcribed in fourteen Days, and the Parliament be diſſolved. *White* v. *Roberts*, *in Sc. T.* 1720. *Bunb.* 64.]

[If Error is brought in Parliament tho' the Houſe is prorogued, and the Record has not been tranſcribed, the Court will not on Motion grant Leave to take out Execution. *Wright* v. *Grove*, *T.* 1723. *Bunb.* 131.]

So, if a Writ of Error is returnable in *B. R.* or *Exchequer*, after the next Term. 1 *Vent.* 266.

Or, on the laſt Return of the next Term; for it ſeems an affected Delay. *Semb.* 1 *Sid.* 45, 454. 1 *Vent.* 266.

So, if Judgment is affirmed in the *Exchequer* Chamber, and after a *Scire facias* thereupon, a *Quare Executionˊ non*, &c. is brought, and Execution is awarded, and then a Writ of Error is brought thereon, it ſhall not be a *Superſedeas*. *R.* 5 *Mod.* 230.

[After Affirmance, Error *coram vobis* without Leave is no *Superſedeas*, for it cannot be allowed without Leave. *Horne* v. *Buſhel*, *P.* 6 *G.* 2. *Str.* 949.]

So, if, after Error, the Record is not removed, for a Delay appears. *Pr. Reg.* 210. And the Plaintiff may have a Writ *de Executione Judicii*. *Mod. Ca.* 220.

So if, by a Defect in the Writ of Error, the Record is not removed, Execution may be taken out without Motion. 1 *Sal.* 265.

Otherwiſe, if the Writ of Error abates. *Ibid.*

[If Error abates by the Act of Plaintiff (as if Feme-ſole marries) Execution ſhall go. *Buller* v. *Luſitano*, *M.* 4 *G.* 2. *Str.* 880. *Jenkins* v. *Bates*, *P.* 8 *G.* 2. *Str.* 1015.]

So by the *St.* 3 *Jac.* 8. Error is no *Superſedeas* upon a Judgment in Debt for Money only, or Rent, or any Contract, if the Plaintiff does not find Bail, *&c.* As, in Debt, Covenant, *&c.* for Non-payment of Rent, *&c.* *Sho.* 14. 2 *Keb.* 131. *Vide Bail*, (G. 2.)

[A Bond given by *A.* to *B.* to pay a Sum certain, (the Debt of *C.*) by Inſtalments, the Laſt whereof is ſtill future, is an Obligation for the Payment of Money only, within 3 *J.* 1. *c.* 8. *Chauvet* v. *Alfray*, *H.* 32 *G.* 2. 2 *B. M.* 746.]

But the *St.* 3 *Jac.* 8. does not extend where Error was before the Statute, and diſcontinued by the not Coming of the Juſtices, and then another Writ is brought after the Statute. *R.* 2 *Cro.* 135.

[Bail is not requiſite on bringing Writ of Error on Judgment, in an Action of Debt, founded on a prior Judgment. *R. by* all *the Judges*. *Bidleſon* v. *Wytel*, *T.* 4 *G.* 3. 3 *B. M.* 1545.]

[Nor on Judgment, in Action of Debt upon a Recognizance of Error. *Trinder* v. *Watſon*, *M.* 5 *G.* 3. 3 *B. M.* 1566.]

[If Rule for better Bail is ſerved in Vacation, Defendant muſt juſtify before a Judge, or Execution may iſſue. *Barnes* 211.]

[In Ejectment, after Verdict, tho' Writ of Error allowed, if no Recognizance entered into, nor Bail put in, Plaintiff may take out *Hab. Fac. Poſſ.* and take Poſſeſſion. *Barnes* 212.]

Nor by the *St.* 13 *Car.* 2. 2. On Judgment after Verdict in Debt for not ſetting out Tythes; in an Action upon the Caſe upon a Promiſe for Payment of Money, Trover, Covenant, Detinue, or Treſpaſs.

Nor by the *St.* 16 & 17 *Car.* 2. 8. On Judgment after a Verdict in any perſonal Action, or in Ejectment, or Dower.

So, it is no *Superſedeas*, if Bail is not found purſuant to the *St.* 3 *Jac.* where Error is upon a Judgment in Debt upon a Bond for Payment of ſo much Money as *A.* ſhall declare due upon Account between them. *R. per* 3 *J.* 1 *Lev.* 117.

So Error in Parliament is no *Superſedeas*, if a new Recognizance is not given by Bail, where there was Bail upon Error before brought in the ſame Cauſe in *B. R.* for ſuch Bail is not liable to the Coſts in Parliament. *R.* 1 *Sal.* 97. *R.* 2 *Mod. Ca.* 79. *Colebrooke* v. *Diggs*, *T.* 8 *Geo.* *Str.* 527.

But Bail is ſufficient, tho' the Defendant himſelf did not give his Recognizance. *R. Carth.* 121.

So there may be Exception to the Bail, without Notice, but they cannot take out Execution without a Rule of four Days for other Bail. 1 *Sal.* 98.

But by the *St.* 13 *Car.* 2. and 16 & 17 *Car.* 2. Thoſe Clauſes do not extend to Error by an Executor or Adminiſtrator, nor are they within the *St.* 3 *Jac.* 8. If Error is brought by them upon a Judgment againſt the Teſtator, or againſt themſelves, as Executor or Adminiſtrator. *R.* 2 *Cro.* 350. *Cro. Car.* 59. *Lit.* 3. 1 *Sid.* 183. *Vide Coſts*, (B.)

Otherwiſe, if the Executor or Adminiſtrator is chargeable *de Bonis propriis*. 2 *Cro.* 350. *R.* 1 *Sid.* 368.

[Tho' an Executor is not obliged to give Bail, yet if he gives it, it is good. *Laſerre* v. *Johnſon*, *H.* 13 *G.* *Str.* 745. *Ld. Raym.* 1459.]

[Executor may revive, but cannot take out Execution pending Error. *Barnes* 432.]

So

So the *St.* 3 *Jac.* 8. does not require Bail in Error upon a Judgment in Debt upon a Bond for Performance of Covenants. *R. Sho.* 15. *R.* 2 *Bul.* 54.

Tho' the Breach be for Non-payment of Rent, *&c. Sho.* 15. *R.* 2 *Keb.* 131. *R. Carth.* 29.

Nor in Error upon a Judgment in Debt upon a Bond for Payment of Money at the Return of a Ship and Performance of the Articles of a *Bottomree* Contract. *R. Sho.* 14. *Dub. Mod. Ca.* 38.

[On a Bottomree-bond there muſt be Bail. *Pett* v. *Coney*, *M.* 8 *G. Str.* 476.]

Nor in Debt for not performing an Award. *Sho.* 14. *R.* 2 *Bul.* 54.

Or for Arrearages of an Account. *Sho.* 15. *R.* 2 *Bul.* 54.

Nor in Error upon a Judgment in an Action upon the Caſe upon a Bill of Exchange. *Sho.* 15.

Nor in Debt upon a Bond to indemnify. *Sho.* 14.

Nor in Error brought againſt an Avowant for Rent by the Plaintiff in Replevin; for it is not Debt brought by him. *R. Hob.* 265.

Yet, in Error upon a Judgment in Debt upon a Judgment, Bail is required by the *St.* 3 *Ja.* tho' the firſt Judgment was in Debt for not performing Covenants. *R. per* 2 *J.* 1 *Lev.* 260.

[After Error brought, Plaintiff cannot take out a *Ca. ſa.* and return *Non eſt inventus*, in order to proceed againſt the Bail. *Sweetapple* v. *Goodfellow*, *P.* 3 *G.* 2. *Str.* 867.]

[And if he does, it ſhall be ſet aſide with Coſts. *Andrews* v. *Jernigan*, *M.* 10 *G.* 2 *B. R. H.* 315. *Smith* v. *Nicholſon*, *P.* 16 *G.* 2. *Str.* 1186. *Wilſ.* 16.]

[If Bail do not apply to ſtay Proceedings pending Error till the Time to ſurrender is out, the Court will not give them any Time for that Purpoſe, but only four Days to pay the Money after Judgment affirmed. *Richardſon* v. *Jelly*, *T.* 21 *G.* 2. *Str.* 1270.]

[Plaintiff in Error on Ejectment becomes Bail to proſecute in double the Rent, and juſtifies. *Thomas* v. *Goodtitle*, *M.* 10 *G.* 3. 4 *B. M.* 2501.]

[On an Action brought on the Recognizance, on Affirmance of Judgment in Ejectment, if Defendant pleads no Damages occurred, and Plaintiff replies Non-payment of Coſts, and on Defendant's Motion it is referred to the Maſter to ſee what is due, Plaintiff ſhall have the meſne Profits as well as Coſts, and it ſhall ſtay in the Maſter's Hands till the Writ of Inquiry for meſne Profits is executed, and then Proceedings to ſtay. *Doe* v. *Roache*, *P.* 10 *G.* 2. *B. R. H.* 373.]

[If Plaintiff pleaſes, he may waive the Damages ariſing from Waſte, and meſne Profits, and be ſatisfied with the Coſts awarded; and then there is no Need of Writ of Inquiry, but he may proceed on the Recognizance without it. *Doe* v. *Roache*, *P.* 11 *G.* 2. *Andr.* 153.]

[If Defendant a Priſoner brings Error, and puts in Bail, he ſhall have *Superſedeas*; for tho' Writ ſhould be *non-proſs'd* for want of Tranſcribing, Bail are liable. *Barnes* 499.]

[On Error brought by Defendant and tranſcribed, but undetermined, if Plaintiff brings new Action on his Judgment, and has Judgment for Want of Plea and Execution on it; the Court will ſtay Proceedings on it, and reſtrain alſo Defendant from bringing Bill in Equity, *Taſwell* v. *Stone*, *T.* 9 *G.* 3. 4 *B. M.* 2454.]

(3 B. 13.) Record, how removed.

When Error is brought in *B. R.* of a Judgment in *C. B.* a *Mittitur* is wrote upon the Roll, and thereupon the Record itſelf (except in the Caſe of a Fine) is tranſmitted to *B. R.* 1 *Rol.* 752. *l.* 45. *F. N. B.* 20. *F.*

And in Error of a Fine in the *Huſtings* of *Oxford*, the Record itſelf ſhall be removed. 1 *Rol.* 753. *l.* 5.

The whole Record ſhall be removed. (*Vide Com. Att.* 65.)

If

If the Verdict is quaſhed for Inſufficiency in Point of Law, apparent upon the Record, it ſhall be removed. *R.* 2 *Sand.* 254.

But, in Error of a Fine, only the Tranſcript ſhall be removed; for if it is affirmed, *B. R.* has no Chirographer, nor can hold Plea in *Quid Juris clamat. D. Dy.* 89. *b.* 1 *Rol.* 752. *l.* 50. *F. N. B.* 20. *F. Vide Fine*, (H. 5, 7.]

Yet *B. R.* may ſend for a Note of the Fine, and reverſe it. 1 *Rol.* 752. *l.* 55. *F. N. B.* 20. *F.*

Or command the Treaſurer and Chamberlain to take it off the File. 1 *Rol.* 753. *l.* 3.

So in Error in the *Exchequer* upon a Judgment in *B. R.* only the Tranſcript ſhall be ſent. 2 *Cro.* 535. *Vide Courts*, (B. 1.)

So in Error in Parliament upon a Judgment there, for the Chief Juſtice conveys the Roll with the Tranſcript to the Houſe of Lords, and leaving the Tranſcript there takes back the Roll. 4 *Inſt.* 21. *Dy.* 375. *a.* 1 *Rol.* 753. *l.* 20. 2 *Cro.* 341. *Godb.* 247. *Vide Parliament*, (L. 2.)

[If Error in Parliament is not tranſcribed in fourteen Days, the Defendant in Error, on Motion, ſhall be at Liberty to take out Execution, if it is not tranſcribed and certified in eight Days. *Froſt* v. *Dawes*, *in Sc. H.* 1720. *Bunb.* 69.]

So in Error in *B. R.* upon a Judgment in *Ireland*, only the Tranſcript is removed, becauſe of the Danger of the Seas. 2 *Cro.* 535. *Yel.* 118. *Godb.* 247. 2 *Bul.* 162, 163. 2 *Rol.* 126, 274.

If Error be in *B. R.* of a Judgment in *C. B.* tho' the Judgment and the Record, on which it is entred, be removed; yet the Original ſhall not be removed. 1 *Rol.* 753. *l.* 7.

Nor in Error of a Judgment in *Ireland*. 1 *Rol.* 753. *l.* 15.

Nor is it neceſſary in Error of a Judgment in an inferior Court. 1 *Rol.* 753. *l.* 10.

[On a Writ of Error, *C. B.* ſends up the very Record, but *B. R.* ſends only a Tranſcript to the Exchequer-chamber, and therefore the Tranſcript muſt be brought back to *B. R.* to be amended by the original Record. *Rutter* v. *Redſtone*, *T.* 3 *G.* 2. *Str.* 837.]

But in Error upon a Judgment in an inferior Court upon a *Scire facias* againſt Bail, the Proceedings in the Original Action may be returned. *R. Ray.* 431.

And when, upon Error, the Original, Imparlance, Warrant of Attorney, or other Part of the Record is not returned, the Plaintiff in Error may alledge Diminution, and have a *Certiorari* for the Part not returned. 1 *Sal.* 267.

[If Exception is taken to the Omiſſion of a Word in a Writ, Plaintiff in Error muſt bring it before the Court by *Certiorari*. *Dobſon* v. *Dobſon*, *P.* 7 *G.* 2. *B. R. H.* 19.]

And Diminution may be alledged in Error upon a Judgment in *Wales*, in a County *Palatine* before Juſtices of *Oyer* and *Terminer*, as well as upon a Judgment in *Weſtminſter-Hall*. 1 *Sid.* 40, 139, 147.

So, if a different Original, *&c.* is returned, the Defendant may alledge Diminution, and return a true Original. *R.* 2 *Cro.* 130. *R. Cro. Car.* 91.

So, if Want of an Original, *&c.* be aſſigned for Error, the Defendant in Error may alledge Diminution, and have a *Certiorari*. 1 *Sal.* 267.

Or may by Rule compel the Plaintiff to do it. *Ibid.*

But, if neither the Plaintiff or Defendant does it, but pleads *In nullo eſt erratum*, Judgment ſhall be affirmed. *R.* 1 *Sal.* 267. *Sho.* 76.

If a *Certiorari* is awarded upon Diminution alledged, the Defendant in Error may enter a Rule with the Secondary for a Return of the Writ, and if it be not returned at the Day, the Benefit of it will be loſt. *Vide Intr.* 4. 1 *Sal.* 267.

But Diminution cannot be alledged in Error upon a Judgment in an inferior Court. 1 *Sid.* 40. *R.* 1 *Sal.* 266.

Or upon a Judgment in *Ireland*. *Vide Intr.* 4. *R. cont. Sho.* 214.

Nor after *In nullo eſt erratum* pleaded. 1 *Sid.* 139. *Cro. El.* 84. *R. Mo.* 700. 1 *Sal.* 269. 2 *Cro.* 141.

[The Court may take Notice that the Record is imperfect, and award a *Certiorari* for their own Satisfaction before Errors assigned. *Bellew* v. *Scott*, T. 7 G. *Str.* 440.]

[The Court may award *Certiorari* to bring the Original before them *ad informand. conscient. cur.* though no Diminution is alledged. *Franklyn* v. *Reeves*, P. 8 G. 2. *B. R. H.* 118.]

And, after *In nullo, &c.* pleaded, the Court, *ad informandum* in Matter of Fact, and for Affirmance of the Judgment, may award a *Certiorari*. 1 *Sal.* 269. *Sho.* 214.

So, in all Cases, the Court may award a *Certiorari* for any Part of the Record, not returned, or mistaken; for tho' the Party is estopped by Plea of *In nullo est erratum*, the Court shall not be. *R.* 1 *Sal.* 270.

[If an erroneous Writ of Privilege is assigned for Error, it must be brought before the Court by *Certiorari*; the Recital in the Declaration is not sufficient. *Drew* v. *Rose*, T. 11 G. 2 *Ld. Raym.* 1398.]

[If to a *Certiorari* Return is made, that there is no such Writ remaining in the Office, and on a second *Certiorari*, Return is made, that on searching the Writs, there is such a Writ, the second Return shall be taken to be true. *Shipman* v. *Lethieullier*, P. 13 G. *Ld. Raym.* 1476.]

A second *Certiorari* shall not be granted to reverse a Judgment. *Merrifield* v. *Berrey*, T. 13 G. *Str.* 765. *Bowers* v. *Mann*, M. 2 G. 2. *Str.* 819.]

[After *in nullo est erratum* pleaded, and argued, and allowed to be a Confession of the Errors, the Court on Affidavit may award *Certiorari* for Affirmance of Judgment. *Berkley* v. *Howard*, T. 5 G. 2. *Str.* 907.]

[Errors cannot be verified by a *Certiorari*, tested before the Writ of Error. *Bowers* v. *Mann*, M. 2 G. 2. *Str.* 819. *Ld. Raym.* 1554.]

[The Return is good, tho' the Name of Office is omitted, if it says, *as to me within is directed.* *Sullivane* v. *Seagrave*, P. 12 G. *Str.* 695.]

If there is a material Variance between the Writ of Entry, and the Record certified, the Record is not removed thereby: As, if it varies in the Stile of the Court. *R.* 1 *Rol.* 754. *l.* 50. *R. Sho.* 145.

If it varies in the Judges of the Court. *R.* 2 *Cro.* 254.

Or says, *in Curia nostra, &c.* where the Judgment was in the Time of the Predecessor. *R. Dy.* 105. *b.* 1 *Rol.* 754. *l.* 15, 45. *Sho.* 186, 3. *R. Carth.* 158.

So, if it varies in the Name of any Party, his Abode, or Addition. 1 *Rol.* 754. *l.* 5. *R.* 1 *Sid.* 104, 193. *R. Dy.* 173. *b.* 1 *Sal.* 264.

Or mentions more or fewer Parties. *R.* 1 *Rol.* 753. *l.* 45. *R.* 1 *Sid.* 269.

Or a different Sum for Damages, *&c.* 1 *Rol.* 754. *l.* 40.

Or different Particulars recovered. 3 *Co.* 2. *a.*

Or different Parishes, where the Lands lie. 2 *Jon.* 171.

So, if the Writ be directed to *A.* of a Judgment *coram Vobis*, and the Record is *Placita coram B.* and afterwards there is an Entry, that *B.* died, and *A.* was made Chief Justice. *R. Sho.* 26.

If Error is sued, and the Record returned before Judgment given. *Semb.* 1 *Lev.* 137.

So, if the Writ of Error mentions a Suit by Bill, where it was by Writ of Privilege, or by Original. *R. Sal.* 660.

But if the Writ of Error does not mention some Things so fully as the Record, the Writ shall not abate for it: As, if it does not mention the Party's Addition. *Per Twisd.* 1 *Sid.* 104. *Per* 2 *J. Dy.* 356. *b.*

[If the Writ is *inter A. nuper de Westm', in com. Midd'*, and the Record is only *nuper de Westm'*, if *Middlesex* is in the Margin, it is well enough. *Ingoldsby* v. *Martin*, T. 6 G. *Str.* 316.]

If it is of a Judgment in *Wales*, or in an Inferior Court, in a *Quod ei deforceat protestando, &c.* and it omits the *Protestando*. *R.* 1 *Sid.* 139.

If Error of a Judgment in *Quare Impedit* says *quia in Recordo et Reddit' Judicii coram Vobis, &c.* where the Judgment was before Justices of *Assise*. *Dy.* 77. *a.*

Or

Or Error is to a Sheriff, without naming his Name, of a Judgment *coram vobis*, where it was before a former Sheriff. *R. Mod. Ca.* 61.

If a Writ of Error omits the Title of the Judge, or that the Suit was by Writ, &c. *Dub. Godb.* 248.

If a Writ of Error has a material Variance, it abates, and the Plaintiff shall have a new Writ.

And the Plaintiff may, by Motion, quash his own Writ for Expedition. (*Vide* 5 *Mod.* 67.)

So, if the Plaintiff does not assign Errors, and take out a *Scire facias* in the Term, when the Record is removed, it is a Discontinuance. *F. N. B.* 20. *G.* *Vide Post*, (3 B. 14.)

So, if the Plaintiff or Defendant in Error dies, the Writ abates. *Vide Abatement*, (H. 33.)

So the Writ abates, if it does not mention the Assise to be *capt' &c. et post adjorn'*, tho' the Record is removed by it. *R. Yel.* 3.

But the Plaintiff cannot quash his Writ of Error upon a foreign Suggestion: As, for Want of all the Parties, &c. 5 *Mod.* 67.

If Error abates, or is discontinued, after the Record itself is removed, there shall be a new Writ *quæ coram vobis resident*. *R.* 1 *Rol.* 753. *l.* 40. *R. Yel.* 6.

So, if Error is brought for Error in Fact, &c. upon a Judgment in the same Court. *Vide ante*, (3 B. 1.)

So, if a Writ of Error is quashed, where the Writ was by One, when all the Defendants ought to have joined. *R.* 2 *Mod. Ca.* 317, 381.

But if the Record is not removed, there shall not be a new Writ *quæ coram vobis*, &c. As, if a Writ of Error is brought before Judgment given. *R.* 1 *Rol.* 754. *l.* 20. *Vide ante*, (3 B. 7.)

So, if a Writ of Error is quashed for a material Variance. *Yel.* 6. *Vide supra.*

So, if only the Transcript of the Record was removed. *R.* 1 *Rol.* 755. *l.* 10. *D.* 3 *Co.* 15. *b.* *Vide supra.*

Yet, if Error of a Judgment in *Ireland* abates, there shall be a new Writ *quæ coram vobis*, tho' only the Transcript was removed. *R.* 1 *Rol.* 755. *l.* 5.

[Defendant cannot have Leave to transcribe the Record (though Plaintiff has not done it) to *non pros.* the Writ, and have the Benefit of the Recognizance. *Anon. M.* 17 *G.* 2. *Wils.* 35.]

[Rule to transcribe may be served on Plaintiff himself. *Barnes* 410]

[A *Non pros.* signed for Want of transcribing the Record, shall be set aside, if final Judgment is not entered. *Barnes* 195.]

(3 B. 14.) Assignment of Errors.

When the Record is removed, the Plaintiff in the same Term ought to assign his Errors. *F. N. B.* 20. *G.* *Lut.* 354. (3 B. 14.) When it shall be.

And after Errors assigned, he shall have a *Scire facias ad audiendum Errores*, returnable in the same or in the next Term. *F. N. B.* 20. *G.*

And if he does not assign Errors, and take out a *Scire facias* in the same Term, the Writ of Error is discontinued, and the Plaintiff put to a new Writ. *F. N. B.* 20. *G.*

Or the Defendant may have a *Scire facias quare Executionem non*, &c. and upon two *Nichils* and Judgment thereon, he shall have Execution, tho' Error is afterwards assigned. *Carth.* 41.

[A *Scire facias quare Executionem non* must be returnable as the original Process was, whether at a general Return, or at a Day certain. *Eden* v. *Wills*, *P.* 12 *G. Str.* 694. 2 *Ld. Raym.* 1417.]

So, if the Plaintiff does not appear at the Return of the Writ of Error, or assigns Errors insufficiently, being his own Default, the Defendant may take out Execution. *Yel.* 7.

So, if one Plaintiff assigns Error, he must do it in the Name of All, except where the Others are severed. *Mod. Ca.* 40.

So

So Errors muſt be aſſigned in Term, and not in Vacation; for the Court cannot then take Notice of them, tho' they are material. (*Vide Pr. Reg.* 203.

So they muſt be aſſigned upon the Record. (*Vide Pr. Reg.* 196.)

So if, upon Rule given, the Plaintiff in Error in *B. R.* does not aſſign Errors, and certify the Record within eight Days, he will be nonſuited.

[If the Attorney for the Plaintiff in Error from *Ireland* cannot be found, the Court will make a Rule, that if Errors are not aſſigned within a certain Time after Notice is fixed up in the Office, the Defendant in Error may ſign a *Non proſ.* *Leeds* v. *Power*, *H.* 7 *G.* *Str.* 417.]

[If neither Plaintiff in Error, nor his Attorney, can be found, the Court will order that Rule to aſſign Errors fixed up in King's Bench Office ſhall be good Notice. *Thompſon* v. *Baker*, *T.* 8 *G.* 2. *B. R. H.* 130.]

So, if the Defendant takes out a *Scire facias quare Execution' non, &c.* after *Scire feci* returned, the Plaintiff at the Day of Return may aſſign Errors. *Dy.* 77. *a.*

[If Plaintiff in Error is dilatory, Defendant muſt give a Rule to tranſcribe; and if he will not, Defendant may *Non proſ.* Writ of Error. *Goodright* v. *Hugeſon*, *H.* 10 *G.* 2. *B. R. H.* 351.]

[There can be no *Sci. fa. quare execut. non* till the Tranſcript of the Record below is returned. *Semb.* *Ibid.*

[Writ of Error cannot be *non-proſs'd* without a Rule to aſſign Errors. *Leith* v. *M'Ferlan*, *M.* 6 *G.* 3. *B. M.* 1772.]

(3 B. 15.) How it ſhall be.

The Plaintiff may aſſign for Error, an Error in Fact, or Errors in Law. *F. N. B.* 20. *E.*

[On Error in Fact aſſigned, Plaintiff may conclude with an Averment; for Defendant may put in Iſſue if he pleaſes. *Sheepſhanks* v. *Lucas*, *M.* 31 *G.* 2. 1 *B. M.* 410.]

But he cannot aſſign both; for this will be double. *R.* 1 *Rol.* 761. *l.* 35. *D.* 1 *Sid.* 147. 1 *Lev.* 105. 76.

[As Error in Fact and in Law cannot be both aſſigned on one Writ; ſo, after Affirmance on Error in Law aſſigned, Error *coram vobis*, and Error in Fact aſſigned, ſhall not be allowed. *Burleigh* v. *Harris*, *P.* 7 *G.* 2. *Str.* 975.]

Nor can he aſſign ſeveral Errors in Fact. *F. N. B.* 20. *E.*

Yet he may aſſign ſeveral Errors in Law, and it will not be double. *F. N. B.* 20. *E.*

Nor can he aſſign an Error in Fact, if it was not aſſigned before the *Scire facias*. *Ibid.*

So he cannot aſſign Error in Proceſs after *In nullo eſt erratum* pleaded. *R. Cro. El.* 83.

Nor Error for Want of an Original; for the Party cannot alledge Diminution. *R. Cro. El.* 84.

[If Plaintiff in Error means to take Advantage of there being no Bill, *&c.* he muſt aſſign it for Error, take out *Certiorari*, and get it returned. *Gradell* v. *Tyſon*, *M.* 13 *G.* *Ld. Raym.* 1441.]

The Plaintiff generally may appear by Attorney, and aſſign his Errors.

But if he be in Execution, he muſt aſſign them in Perſon. *F. N. B.* 21. *A.*

[The Court may give Leave to a Defendant, in Execution, to aſſign Errors by Attorney. *Rex* v. *Stapleton*, *T.* 7 *G.* *Str.* 443.

All the Plaintiffs muſt join in Aſſignment of Errors, for an Aſſignment by one is a Diſcontinuance. *R.* 2 *Cro.* 94.

Tho' after a *Scire facias ad audiendum Errores*, they all join in the Re-aſſignment. *R.* 2 *Cro.* 94.

Tho' it be in a *Quare Impedit*, where the Biſhop is only nominal. *R.* 2 *Cro.* 94.

The Plaintiff muſt put in a Bill, containing the ſeveral Errors aſſigned. *F. N. B.* 20. *G.*

And it ſhall not be general *In omnibus erratum eſt*, but it muſt ſhew particularly *Erratum eſt in hoc, &c.* *Ibid.*

Yet

Yet General Error, that Judgment was given for the Plaintiff, where it ought to have been for the Defendant, is well.

Error may be assigned in every Part of the Record. 1 *Rol.* 760. *l.* 45.

If the Assignment of Error concludes with an Averment *prout' Cur' Consid'* it will be well, tho' it is Error in Fact. *Semb.* 2 *Lev.* 73.

But if Error in Fact be assigned, notoriously false, the Attorney may be fined. *Sal.* 516.

(3B. 16.) What Matters cannot be assigned.

But the Plaintiff cannot assign for Error a Matter contrary to the Record. 2 *Cro.* 28. *R.* 1 *Lev.* 76. *R.* 1 *Sal.* 262. 1 *Lev.* 310. 2 *Cro.* 244.

Nor a Thing, whereof he may have Advantage by Plea. *R.* 1 *Rol.* 762. *l.* 40.

Tho' Judgment be by Default. *Dub.* 2 *Cro.* 547.

Or by Complaint to the Court of Irregularity: As, that the Original, *&c.* was not returned by him, who was Sheriff. *R.* 1 *Sal.* 265.

Nor a Thing, which was his own Default, as a Defect in his Plea. *Mo.* 692.

Nor a Thing, which tends to his Advantage, if it was not by the Court's Default. *R.* 5 *Co.* 39. *b.* 1 *Rol.* 760. *l.* 10, 13. *R. Cro. Car.* 437. *R.* 1 *Vent.* 60. 2 *Sand.* 42, 45.

[Error assigned, that Defendant, an Infant, appeared by Attorney; Plea, that Defendant was of full Age; Demurrer, for that no Place shewn where he was of full Age. R. *Venue* as to full Age, or other personal Quality, not necessary; they are triable where Action brought. *Brett* v. *Minter.* *Str.* 8.]

[Error assigned, that *A.* who, on the first Trial, was withdrawn in order for a View, was sworn to the second Pannel, not allowed. *Blewett* v. *Bainard, M.* 4 *G.* *Str.* 70.]

[If the Description of the Judges of Assise, *A.* and *B. just. &c. ad capiend' juxta Formam, &c.* omitting the Word *Assisas*, yet, if it appears in other Parts of the Record, that they were Justices of Assise, it cannot be assigned for Error, for it would be contradicting the Record. *Baker* v. *Thompson, M.* 9 *G.* 2. *B. R. H.* 166.]

[Defendant in Ejectment cannot assign, that being an Infant, he appeared by Attorney. *Goodright* v. *Wright, H.* 3 *G.* *Str.* 25.]

Nor Bail, Matter which lies properly in the Mouth of the Principal. *Wright* v. *Kitchingman, T.* 5 *G.* *Str.* 197.]

[Nor Matter which might have been pleaded to the *Scire facias.* *Ibid.*]

[That the Judgment is entred *quia videbitur* instead of *videtur*, is not Error; for *videtur Cur'* is no Judgment, and is implied in the *ideo Consideratum est.* *Bellew* v. *Scott, T.* 7 *G.* *Str.* 440.]

[That *A.* who was sworn as a Juror returned on the principal Pannel, was not returned by the Sheriff; for it is contrary to the Record. *Helbut* v. *Held, H.* 12 *G.* *Str.* 684. 2 *Ld. Raym.* 1414.]

[That there is no *Venire* nor *Habeas Corpora.* *Ibid.*]

[That the Defendant died before the Day of *Nisi prius*, if the Record mentions that he appeared on that Day. *Plomer* v. *Webb, M.* 3 *G.* 2. 2 *Ld. Raym.* 1415.]

[That the Damages and Costs given by the Court on Demurrer are not said to be given *ex Assensu* of the Plaintiff. *Semb.* *Tully* v. *Sparkes, P.* 3 *G.* 2. *Str.* 867. *Ld. Raym.* 1570.]

[If Judgment be entered *ideo cons.* it is an Abbreviation of *Consideratur*, and as good as *Cons. est* for *Consideratum est.* *Cowper* v. *Osborne, T.* 4 *G.* 2. *Str.* 874.]

[In *Quare Impedit* brought by the Crown, the original Writ was returnable at a general Return, the *Venire* at a Day certain, not Error, not Discontinuance but Miscontinuance, and helped by Statute of Jeofails, 32 *H.* 8. which extends to the Crown in civil Suits. *Rex* v. *Epis. Miden. T.* 3 *G.* *Str.* 62.]

[In Error out of *B. R.* in *Ireland*, for Affirmance of a Judgment in *C. B.* there, Want of Warrants of Attorney on the Writ of Error, assigned, but set aside. *Chartres* v. *Cusaick, H.* 5 *G.* *Str.* 141.]

[A Judgment cannot be reverſed by the Recital of the Writ, but the very Proceſs itſelf ſhall be brought before the Court. *Ducſs. Hamilton* v. *Incledon*, *M.* 6 *G. Str.* 225.]

[If a Peer is put *in Miſericordia*, *&c.* generally, it is not Error. *Ibid.*]

[The Death of Plaintiff in Ejectment. *Moore* v. *Goodright*, *P.* 4 *G.* 2. *Str.* 899.]

[That a Writ of Inquiry does not bear *Teſte* in the Name of the Perſon who is Chief Juſtice of *C. B.* for the Court will not judicially take Notice who are Judges of *C. B.* *Skipp* v. *Hooke*, *M.* 11 *G.* 2. *Str.* 1080. *Andr.* 74. *S. C. by the Title of Hook* v. *Ship.*]

[That Defendant filed Warrant to defend by *A.* his Attorney, and that on the Judgment it appears he appeared, and defended by *B.* his Attorney; for it is contrary to the Record. *Bradburn* v. *Taylor*, *P.* 18 *G.* 2. *Wilſ.* 85.]

[Plaintiff in Error may not plead Payment. *Elmes* v. *Martin*, *H.* 10 *G.* Nor that the Damages recovered had been levied. *Parker* v. *Stanton*, *H.* 12 *G. Str.* 679. 2 *Ld. Raym.* 1414.]

[If Iſſue was joined on ſuch Plea, and found for Defendant in Error, he might take out Execution; but not *Non proſ.* the Writ of Error, till after a Rule to aſſign Errors. *Ibid.*]

(3 B. 17.) *Scire facias ad audiend' Errores.*

If the Defendant in Error does not appear upon the Return of the *Scire facias*, another *Scire facias* iſſues.

If he does not appear at the Return of the ſecond *Scire facias*, the Judgment ſhall be reverſed; for two *Nichils* amount to a *Garniſhment*. *Yel.* 113. *Vide Poſt*, (3 L. 9.)

[On *Scire feci* returned, if the Defendant does not appear and join in Error, Plaintiff may put it in Paper without taking out a Rule to join in Error. *Thatcher* v. *Steppenſon*, *H.* 5 *G. Str.* 144.]

[*Scire facias* in Error need not lie four Days in the Office before the Return, though *Scire facias* againſt Bail muſt. *Millar* v. *Yerraway*, *T.* 5 *G.* 3. 3 *B. M.* 1723. *Groſs* v. *Naſh*. *T.* 9 *G.* 3. 4 *B. M.* 2439.]

If the Defendant appears, the Plaintiff muſt aſſign his Errors, or by Rule with the Clerk ſhall have Day for it till another Term. *Yel.* 7.

And if he does not, the Defendant may have a *Scire facias quare Execution' non*, *&c.* and if the Sheriff returns *Nichil habet*, a ſecond *Scire facias* having fifteen Days between the *Teſte* and Return. *Cro. El.* 706.

If the Sheriff returns *Scire feci*, or otherwiſe, at the Return of the ſecond *Scire facias*, the Defendant may give a Rule to aſſign his Errors, and if the Plaintiff does not aſſign them, the Judgment ſhall be affirmed. *Vide Intr.* 4. 2 *Leo.* 107.

[There muſt be a Rule on the *Scire facias quare executio. &c.* before there can be a Rule to aſſign Errors. *Marſhal* v. *Cope*, *M.* 5 *G.* 2. *Str.* 917.]

[If there are two Defendants in Error, and *one only* prays *Scire facias quare*, *&c.* and Plaintiff comes in and aſſigns his Errors, it is not Error though poſſibly he might have moved to quaſh it, but he has waved his Objection. *Knox* v. *Coſtello*, *M.* 6 *G.* 3. 3 *B. M.* 1789.]

[If original Plaintiff dies pending Error, his Executor may have *Scire facias quare*, *&c.* out of *C. B.* before Record tranſcribed; after, out of *B. R.* and Plaintiff in Error may have *Scire facias ad audiend.* out of *B. R.* againſt Executor. *Barnes* 432.]

[If upon the Return of a *Scire facias*, Plaintiff aſſigns his Errors, all further Proceedings ſhall be ſtaid upon it; but where he ſtands out upon Pleadings to the *Sci. fa.* Execution ſhall go, if it be adjudged againſt him. *Gardiner* v. *Claxton*, *M.* 7 *G. Str.* 396.]

If a Defendant in Error dies, a *Scire facias* goes againſt his Executor, and upon *Scire feci* or two *Nichils* returned, the Plaintiff ſhall aſſign his Errors, and, if it be erroneous, the Judgment ſhall be reverſed. *R. Yel.* 113.

In Error upon a *Quare Impedit*, if the Defendant takes out a *Scire facias quare Executio non*, &c. which is returned *Scire feci*, at the Day of the Return, the Plaintiff may assign his Error, tho' the *Scire facias* was general, and not *ad Assignandum Errores*. *R. Dy.* 77. *a*.

If the Plaintiff in Error was outlawed before Error brought, and, after Appearance by the Defendant, he does not assign Errors, the Defendant may take out a *Capias Utlagatum*, and need not have a *Scire facias*. *R. Cro. El.* 706.

If the Plaintiff, outlawed, appears to assign Errors, he shall be committed, till he finds Bail for the Outlawry, and also for Satisfaction of the Party. *Cro. El.* 707.

If the Defendant, in Error upon a Judgment for Land, appears and is not the *Tertenant*, a *Scire facias* shall be awarded against the *Tertenant*, before the Judgment reversed or Errors examined: As, in Error upon a Fine against the Heir of the Conusee. *Dy.* 321.

So in Error upon a Common Recovery. *R.* 3 *Mod.* 119.

[If on Error from *Ireland*, *B. R.* has affirmed their Judgment on a collateral Point, (that the *Parol* might demur) Plaintiff, on Defendant in Error's coming of Age, cannot take out *Scire facias ad audiend. Errores* in *B. R.* in *England*; but the Record must be remitted to *Ireland*. *Fortescue A.* v. *Mason*, *T.* 19 *G.* 2. *Str.* 1258.]

[If Plaintiff below brings Error to reverse his own Judgment, and does not proceed, the Court will make a Rule to assign Errors in limited Time, or his Writ to be *nonpross'd*; for *Scire facias* would here be improper. *Johnson* v. *Jebb*, *M.* 6 *G.* 3. 3 *B. M.* 1772.

(3 B. 18.) Pleas to Errors assigned.

(3 B. 18.) *In nullo est erratum.*

When the Defendant appears, if the Plaintiff assigns Error in Fact, the Defendant may join Issue upon the Fact. 1 *Lev.* 80.

If he pleads *In nullo est erratum*, he admits the Fact assigned for Error. *R. Yel* 57. *R.* 2 *Lev.* 38.

But if the Fact assigned for Error is no Error, *In nullo est erratum* is a good Plea, for it is in the Nature of a Demurrer, and refers the Matter to the Judgment of the Court. *R. Yel.* 58. *R.* 2 *Cro.* 521. 1 *Lev.* 311.

As, if the Error is that *A.* returned upon a Panel, was afterwards sworn upon the *Tales*; for it is contrary to the Record. *R.* 2 *Cro* 28.

That *A.* was returned in the Panel and *B.* sworn. *Sho.* 49.

So, if the Plaintiff assigns Errors in Law, the Defendant may plead *In nullo est erratum*.

After *In nullo est erratum* pleaded, if the Plaintiff discontinues, he shall have no new Writ of Error, as he may where he discontinues before Plea. (*Vide Pr. Reg.* 200.)

If the Defendant dies after *In nullo est erratum* pleaded, the Court may reverse the Judgment without a new Writ of Error, for the Writ does not abate. *Sho.* 186.

After *In nullo est erratum*, Assignment of general Errors shall not be amended. 2 *Mod. Ca.* 304.

(3 B. 19.) Release of Errors.

So the Defendant may plead a Release of Errors, &c. *Sho.* 50. *Ash. Ent.* 332.

[A Release of Errors in the same Instrument with the Warrant of Attorney, and dated in Term in which Judgment is entered, is good. *Landon* v. *Pickering*, *M.* 18 *G.* 2. *Str.* 1215.]

[A Release of Errors given after Judgment, and an Award of Execution on a *Scire facias*, extends to the Award of Execution; but not, had it been given after the Judgment, and before the *Scire facias* taken out. *Per Hardwicke C. Marquis of Powis's Case*, *H.* 1745. 3 *Atkyns* 297.]

So an Heir in Error against him, tho' he has Nothing in the Land. 1 *Rol.* 766. *l.* 15.

And

And if Several ſue and have Judgment againſt them, and bring Error, a Releaſe of one Plaintiff is a Bar. 3 *Mod.* 135. 2 *Rol.* 412. *l.* 12. 2 *Cro.* 117.

So, if there are ſeveral Judgments againſt ſeveral Defendants in Treſpaſs, and they join in Error, a Releaſe of one is a Bar. 2 *Rol.* 411. *l.* 50.

But a Releaſe by one of the Defendants in Error is no Plea againſt the others. *R.* 3 *Mod.* 109, 135. *R.* 6 *Co.* 25. *b.*

Tho' they were all ſued jointly and for a perſonal Thing. *R.* 3 *Mod.* 109. *R.* 2 *Cro.* 117.

For he, who releaſed, may be ſummoned and ſevered, where Summons and Severance lie in the Original Action. 6 *Co.* 25. *a.*

So, where there is Judgment againſt Several for a Thing in the Realty, a Releaſe of Errors by One is no Bar againſt the others: As, upon a Judgment in Partition. *R. Cro. El* 65.

A Releaſe of Errors pleaded after the Eſſoin-Day, and before the *Quarto Die poſt*, muſt be *puis darrein Continuance*. *R.* 2 *Cro* 243.

If a Releaſe of Errors is pleaded, the Judgment ſhall be *Quod* the Plaintiff in Error *Nil capiat per Breve*, not that the Judgment ſhall be reverſed, when it is erroneous. *R. Sho.* 50. [*Cunningham* v. *Houſton*, *M.* 5 *G. Str.* 127. *Dent* v. *Lingood*, *H.* 12 *G. Str.* 683.]

[If Releaſe of Errors is pleaded, the Court will not affirm the Judgment, becauſe the Plea is a Confeſſion it was erroneous: But Judgment ſhall be, *Quod Querens nil capiat per Breve de Errore*. *Cunningham* v. *Houſton*, *M.* 5 *G. Str.* 127. *Dent.* v. *Lingwood*, *H.* 12 *G. Str.* 683.]

So, if the Releaſe is miſpleaded, or found againſt the Defendant, the Judgment ſhall not be reverſed, except where Error appears upon the Record. *Semb.* 1 *Sal.* 268.

If Error in Fact is alledged, which does not appear by the Record, nor is confeſſed by the Party, the Court *ex Officio* award a *Certiorari ad informand' Conſcientiam*. *Per* 3 *J. Holt cont.* 1 *Sal.* 268. *Mod. Ca.* 113. 206.

So the Defendant in Error may plead, a Fine after the Land recovered and five Years paſſed. *R.* 1 *Rol.* 766. *l.* 10.

So a Releaſe by the Demandant of his Right in the Land, tho' the Defendant has Nothing in the Land. 1 *Rol.* 766. *l.* 20.

Or Baſtardy of the Demandant, where it is material. 1 *Rol.* 766. *l.* 17.

[On Error to reverſe a common Recovery, a Terre-Tenant can plead Nothing to the *Scire facias*, but a Releaſe of Errors. *Hall* v. *Woodcock*, *T.* 30 & 31 *G.* 2. 1 *B. M.* 359.]

[The Statute of Limitations may be pleaded. *Street* v. *Hopkinſon*, *M.* 10 *G.* 2. *Str.* 1055. *B. R. H.* 345.]

(2 B. 20.) Judgment in Error.

If the Judgment, upon Writ of Error, be affirmed, the Court, who affirm it, may alſo give Judgment for Coſts for Delay of Execution. 2 *Sand.* 225. 4 *Mod.* 127.

And may award Execution by *Capias*, *Fieri facias*, or *Elegit*, without a *Scire facias*. *Cro. El.* 707. *Vide Execution*, (I. 1.)

[If Judgment in *Quare impedit*, with Damages to the Patron, be affirmed, the Damages on the Delay ſhall only be aſſeſſed at the Rate of the Intereſt of the original Damages. *Biſhop of London* v. *Mercers Company*, *H.* 5 *G.* 2. *Str.* 925.]

[If on a *Scire facias* againſt an Executor, Execution is awarded, and then the Record goes on with a *Conſideratum eſt etiam*, and awards Coſts; Judgment ſhall be reverſed as to the Coſts, and affirmed for the Reſt. *Bellew* v. *Aylmer*, *T.* 5 *G. Str.* 188.]

[In an Action for Words, if the Jury on Writ of Inquiry give 10 *s.* Damages, and Coſts are taxed at 13 *l.* and Judgment to recover them, Judgment ſhall be reverſed *in Toto*. *Lamper* v. *Hatch*, *P.* 5 *G* 2. *Str.* 934.]

If the Judgment, upon Writ of Error, be reverſed, the Court, who reverſe it, ſhall give the ſame Judgment, generally, as the inferior Courtat firſt ought to have given. 2 *Sand.* 256. 1 *Sal.* 401.

As,

As, if a Judgment in *B. R.* for the Defendant in Ejectment is reverſed in Parliament, Judgment ſhall be there given that the Plaintiff recover his Term. 4 *Mod.* 127, 8. *Ca. Parl.* 57. 1 *Sal.* 403. *Carth.* 180. *Skin.* 515.

And if the Parliament omits or refuſes ſuch Judgment, *B. R.* cannot afterwards give it, for by the firſt Judgment the Court has executed its Authority. *R.* 4 *Mod.* 127. *Ca. Parl.* 57. 1 *Sal.* 403.

So, if Judgment in *C. B.* for the Defendant in Treſpaſs is reverſed in *B. R.* this Court ſhall give Judgment for the Plaintiff. 2 *Cro.* 206. *R.* 1 *Sal.* 262. 401.

So, if Judgment in *C. B.* that the Writ abate is reverſed in *B. R.* this Court ſhall give the ſame Judgment as *C. B.* ought to have given. 2 *Sand.* 256. 2 *Inſt.* 23. 4 *Inſt.* 72. *R.* 1 *H.* 7. 12. *a.*

So, if a Judgment in *Wales* is reverſed there. 2 *Sand.* 257. 1 *Vent.* 61.

So, if the laſt Judgment in Account in an inferior Court is reverſed in *B. R.* a *Capias ad computandum* ſhall be ſued out of *B. R.* *R. Cro. El.* 806.

So, if Judgment in *Ireland* in Ejectment for the Defendant is reverſed in *B. R.* they ſhall give Judgment for the Plaintiff. *Cro. Car.* 511. *Vide Ireland* (G.)

So, if a Judgment in the *Huſtings* is reverſed in Error before Commiſſioners aſſigned. *R.* 2 *Sand.* 256.

Or Judgment in an inferior Court is reverſed in Error in *B. R.* *R. Sho.* 400.

[If there is Judgment againſt two Tenants (*A.* and *B.*) in Dower, for Dower, and for Damages and Coſts, and they two bring Error, and *A.* dies, and his Heir and *B.* bring new Writ of Error, and Judgment is affirmed; Execution for Damages and Coſts muſt be awarded againſt both Plaintiffs in Error; and there muſt be a Writ of Inquiry to compute Damages from the Judgment to the Affirmance. And if otherwiſe, on Error brought here on Judgment in Error in *Ireland*, *B. R.* will affirm as to the Dower, and reverſe as to the Damages; and command *B. R.* in *Ireland* to award Writ of Inquiry, and to do as by Law, *&c.* *Kent* v. *Kent*, *P.* 7 *G.* 2. *Str.* 971. *B. R. H.* 50.]

But if Judgment in *B. R.* is reverſed in the *Exchequer* Chamber, the Record ſhall be remanded by the *St.* 27 *El.* for the *Exchequer* has no Authority but to affirm or reverſe the Judgment of *B. R. Cont.* if it is upon a ſpecial Verdict. 1 *Sal.* 403.

And therefore, if there is Judgment in Treſpaſs, upon a Demurrer, for the Defendant in *B. R.* which is reverſed in the *Exchequer* Chamber, the Record ſhall be remanded, and *B. R.* ſhall award a Writ of Inquiry, and ſhall give final Judgment thereon *R.* 2 *Cro.* 206. *Yel.* 26. 4 *Mod.* 125. *Sal.* 403.

So the Record ſhall be remanded where the Plaintiff in Error is nonſuited or diſcontinues. 2 *And.* 123.

So if Judgment in *C. B.* for the Plaintiff is reverſed in *B. R.* in Error by the Defendant, there ſhall be Judgment for the Reverſal only. *R.* 1 *Sal.* 262.

If Judgment is reverſed for Error, the Whole ſhall be reverſed: And therefore where the Declaration is upon ſeveral Counts, and Judgment for the Plaintiff, it cannot be reverſed for Part, if there is Error only in one Count, and ſtand for the Reſidue. *R.* 1 *Sal.* 24. *R. Carth.* 235.

So, it ſhall not be reverſed *quoad* one Defendant and remain againſt the others who are charged with him: As, if there are three Defendants, and one is an Infant, it ſhall not be reverſed *quoad* the Infant only. *R. Sti.* 121, 125. *Al.* 74.

So, if one is dead. 1 *Rol.* 775. *l.* 12.

So, if it is reverſed for a Fault in one Particular of the Writ, it ſhall be reverſed for the Whole. *R.* 1 *Rol.* 2. 1 *Rol.* 775. *l.* 5. *Cro. Car.* 471.

But a Judgment given upon the Common Law as to Part, and upon a Statute as to other Part, may be reverſed for ſo much as was founded upon the Statute, if it is erroneous, and ſhall ſtand for the Reſidue. 1 *Sal.* 24.

So Judgment in an Information *Qui tam*, *&c.* may be reverſed as to the Informer, and ſtand for the King. *R. Mo.* 565.

[If Judgment for common Informer gives Damages for Detention and Coſts *de Increment*. The Judgment for the Penalty may be affirmed, and for the Damages and Coſts reverſed. *Frederick* v. *Lookup*. *H.* 7 *G.* 3. 4 *B. M.* 2018. *Cuming* v. *Sibley*. *M.* 10 *G.* 3. 4 *B. M.* 2489.]

So a Fine may be reverſed for Part, and ſtand for the Reſidue. *R. Cro. El.* 469. *R. Jon.* 3. *R. Skin.* 343.

So a Fine of Land of *Ancient Demeſne*, and other Land, if it is reverſed for the Land of *Ancient Demeſne* in a Writ of Deceit, ſhall ſtand for the Reſidue. *R.* 1 *Rol.* 775. *l.* 45. *Vide Ancient Demeſne*, (E. 2.)

So where there are diſtinct Judgments, one may be reverſed and not the other: As, a Judgment *quod computet*, and afterwards a final Judgment; if this is reverſed, the Judgment *quod computet* ſhall ſtand. 1 *Rol.* 776. *l.* 40.

So, if Error is brought upon the Principal Judgment, and alſo upon the Judgment in *Scire facias*, and the laſt Judgment is reverſed, the firſt ſhall ſtand. 1 *Rol.* 776. *l.* 45.

If ſeveral Damages are given, it ſhall be reverſed for one Count, and ſtand for another and Coſts. *R.* 2 *Cro.* 343.

If Judgment is reverſed in Error, the Party ſhall be reſtored to all he has loſt.

And a Writ of Reſtitution ſhall be awarded to inquire what Profits the Plaintiff, who recovered, has taken *Colore Judicii prædict'*, and for the Damages found by ſuch Inquiſition the Defendant ſhall have Execution. *R.* 2 *Cro.* 698.

And it is ſufficient to ſay all Profits taken *Colore Judicii*, without ſaying ſince Execution; for the Plaintiff might have entred and taken the Profits before Execution ſued. *R.* 2 *Cro.* 698.

And the Writ of Reſtitution ſhall not be avoided by bringing the Value, for which the Goods were ſold, into Court, or paying it to the Defendant, for perhaps they were ſold under the Value. 4 *Mod.* 161.

But all Profits *a Tempore Judicii* will be bad. *R.* 2 *Cro.* 698.

So where the Money appears upon Record to be levied and paid to the Party, the Defendant ſhall have Reſtitution without a *Scire facias*. *R. Sal.* 588.

But there ſhall be no Writ of Reſtitution againſt a Stranger to the Record, without a *Scire facias*. *R. Sho.* 261.

As, if a Judgment upon an Indictment for Barretry is reverſed after the Money levied and paid to the Collector, a Writ of Reſtitution ſhall not be awarded againſt the Collector. *R. Sal.* 587.

If the Plaintiff after a Recovery in Ejectment is diſſeiſed, or makes a Feoffment, and then the Judgment is reverſed, a Writ of Reſtitution ſhall not be awarded againſt the Diſſeiſor or Feoffee. *Sal.* 587.

If the Money is levied by the Sheriff and not paid to the Plaintiff, a Writ of Reſtitution ſhall not be awarded againſt the Sheriff without a *Scire facias*. *Sal.* 588.

[If Infancy be aſſigned, whereof the Court doubts, a feigned Iſſue ſhall go; and, if found for Plaintiff in Error, Judgment will be reverſed on Return of the *Poſtea*, on Motion, without Argument in the Paper. *Ogburn* v. *Berrington*, *M.* 5 *G. Str.* 127.]

[If Plaintiff in Error aſſigns in Infancy in Defendant, and Appearance by Attorney, takes out *Scire facias ad audiend.* and on *Scire feci* returned, enters the Default; on producing the Record, Judgment ſhall be reverſed, without making it a *Concilium*, or putting it in the Paper. *Walmſley* v. *Roſon*, *T.* 17 *G.* 2. *Str.* 1210.]

[The Judgment on Demurrer for Duplicity of Errors aſſigned, ſhall be an Entry, *quod affirmetur*. *Jeffrey* v. *Wood.*, *T.* 7. *G. Str.* 439.]

[If the Statute of Limitations is pleaded, the Judgment ſhall be, that the Plaintiffs be barred; although Defendant had prayed that Judgment be affirmed; for the Court is not bound by the Prayer of an improper Judgment. *Street* v. *Hopkinſon*, *M.* 10 *G.* 2. *Str.* 1055. *B. R. H.* 345.]

[If Error is not brought in the ſame Court, they cannot award a *Venire facias de novo*. *Ibid.*]

[If

[If Error is brought againſt the Judgment againſt Teſtator, and Award of Execution againſt Executors, the firſt may be affirmed, and the other reverſed. *Ibid.*]

[If Writ of Error is quaſhed, the Court gives Leave to Defendant in Error to take out Execution. *Crow.* v. *Murddock, M.* 12 *G.* 2. *Andr.* 287.]

(3 C) Proceeding in Eſcheat.

IN Eſcheat the Plaintiff muſt count, that the Land was held of him, or his Anceſtor, and the Tenant died without Heir *Raſt. Ent. Eſcheat pl.* 1, 2. *Vide Eſcheat.*

That the Tenant was outlawed, or hanged for Felony. *Raſt. Eſcheat pl.* 6. *F. N. B.* 144. *H.*

And the Writ ſhall ſay *ſuſpenſus per Collum.* tho' the Tenant died after Judgment before Execution. *F. N. B.* 144. *H.*

In Bar the Tenant may traverſe the Tenure. 4 *Co.* 11. *a. Raſt. Eſcheat pl.* 2. Pleas.

Or plead that the Land deſcended to himſelf or another. *Raſt Eſcheat pl.* 3, 5.

But Seiſin of Services alledged in the Count is not traverſable. 4 *Co.* 11. *a.*

(3 D) Proceeding in falſe Judgment.

A Writ of falſe Judgment lies where an erroneous Judgment is given in any Court, not of Record, in which the Suitors are Judges. *F. N. B.* 18. *a.*

Falſe Judgment lies for Miſpriſion in a Cuſtomary Claim, tho' it is not claimed by the Common Law. *R. Mo.* 854.

Upon a Judgment in a Court of Record, there ſhall not be a Writ of falſe Judgment, but a Writ of Error. *Vide ante,* (3 B. 1, &c.)

If there are no Suitors, by whom the Plaint may be certified, there ſhall not be *falſe Judgment:* As, in a Copyhold Court, in which, upon an erroneous Proceeding, the Copyholder muſt ſue to his Lord by Petition. *F. N. B.* 18 *H.*

A Writ of falſe Judgment upon a Judgment in the Sheriff's Court is in the Nature of a *Recordari. F. N. B.* 18. *A. B.*

Upon a Judgment in another Court, not of Record, it is in the Nature of an *Accedas ad Curiam. F. N. B.* 18. *D.*

And it may be ſued by any one, againſt whom falſe Judgment is given, his Heir, Executor, or Adminiſtrator.

Or by Tenant there by Reſceit. *F. N. B.* 19. *G. H.*

Or by any one, who has Damage, tho' the other Defendants do not join, as they ought to do in Error. *R. Mo.* 854.

And againſt the Party to the Judgment and the *Tertenant. F. N. B.* 18. *C.*

Or againſt the *Tertenant* only, without naming him who was Party to the Judgment. *F. N. B.* 18. *I.*

When the whole Record is certified, and not before, the Plaintiffſhall aſſign his Errors. *F. N. B.* 18. *I.*

And ſhall have a *Scire facias ad audiendum Errores,* as in Error. *F. N. B.* 18. *F. G.*

Or, if th Defendant has Day by the Roll, the Plaintiff may aſſign Errors without a *Scire facias* againſt him. *F. N. B.* 18. F.

If the Defendant makes Default after Appearance, a *Grand Cape, &c.* ſhall iſſue againſt him. *F. N. B.* 19. *B.*

And if he cannot ſave his Default, or makes a ſecond Default, the Judgment ſhall be reverſed. *F. N. B.* 19. *B.*

If a Writ of falſe Judgment abates, or the Plaintiff is nonſuited, the Defendant ſhall have a *Scire facias Quare Execution' non. F. N. B.* 18. *F. G.*

The Writ of falſe Judgment ought to be ſerved in Court. 6 *H.* 7. 16. *a.*

And if the Lord refuſes to hold his Court, a *Diſtringas tenere Curiam* goes againſt him. 6 *H.* 7. 16. *a.*

The

The Writ, being ſerved, ſhall be a *Superſedeas* to all Proceeding there. 6 *H.* 7. 15. *b.*

(3 E.) Proceeding in Formedon.

(3 E. 1.) Proceſs.

FORMEDON lies in Diſcender, Remainder, or Reverter.

When it lies or not, and the Nature of the Writ, *Vide F. N. B.* 211. *L.* 212, *&c.*

The Proceſs in *Formedon* is Summons, *Grand* and *Petit Cape*, as in Dower. (*Vide Com. Att.* 217. *Edit.* 1695.) *Vide Ante*, (2 Y. 1.)

At the Return of the Summons the Tenant or his Attorny may caſt an Eſſoin, which ſhall be adjourned to the 15th Day after.

And every Defendant may caſt a ſeveral Eſſoin, for the *St. W.* 1. 43. does not extend to an Eſſoin before Appearance. *R. Hob.* 8. *Vide Ante*, (2 Y. 1.)

If the Tenant does not appear at the Return of the Summons, or Day to which the Eſſoin is adjourned, a *Grand Cape* iſſues.

And by the *St.* 32 *H.* 8. 21. and 16 *Car.* 6. It ſeems that the *Grand Cape* and Summons reſpectively have Return upon the 9th Return after the *Teſte* incluſive.

At the Return of the *Grand Cape* the Tenant may ſave his Default by waging his Law of *Non Summons, &c. Vide Ante*, (2 Y. 1.)

(3 E. 2.) Count.

(3 E. 2.) In *Formedon* in Diſcender.

If the Tenant appears upon the Summons, or a Day is given by Eſſoin, or if he appears at the Return of the *Grand Cape*, and the Demandant, upon waging his Law of *Non Summons*, releaſes the Default, then the Demandant ſhall count.

In a *Formedon in Diſcender*, if Huſband and Wife were both ſeiſed in Tail, the Iſſue muſt demand as Heir to both; if one was in Tail, the other for Life, he muſt make himſelf Heir to him in Tail only. *Reg.* 239. *a.*

The Demandant muſt make himſelf Heir to him, who was laſt ſeiſed by Force of the Entail. 8 *Co.* 88. *b.* *Dy.* 216. *a.* *F. N. B.* 212. *F.* 216. *C.* *Reg.* 238. *b.*

And muſt mention every one in his Pedigree, who was ſeiſed, or had a Right deſcended to him by Force of the Entail. 8 *Co.* 88. *b.* *F. N. B.* 212. *F.*

And every one, who was ſeiſed by Force of the Entail, ought to be named *Son and Heir*, or *Brother and Heir*, *&c.* 8 *Co.* 88. *b.* *F. N. B.* 212. *F.*

But if an Heir, who ſurvived his Anceſtor, died before he was actually ſeiſed, it is ſufficient to name him *Son*, without ſaying *Heir*. 8 *Co.* 88. *b.* *F. N. B.* 212. *F.*

Yet if he is named Son and alſo Heir, it does not prejudice. 8 *Co.* 88. *b.* but is a ſafer Way. *F. N. B.* 212. *F.*

So the Demandant muſt ſhew him, who was laſt ſeiſed to be Heir to the *Donee*. 8 *Co.* 88. *b.*

And it is not ſufficient that he is named *Son*, if he is not alſo *Heir*. 8 *Co.* 88. *b.*

So, if the Demandant claims as Couſin and Heir, he muſt ſhew how Couſin. *F. N. B.* 216. *C.*

In a *Formedon* by Huſband and Wife, the Deſcent muſt be alledged to the Wife only. *Hob.* 1. *Vide ſupra.*

But if a Son dies in the Lifetime of his Anceſtor, he need not be named in the Pedigree. *F. N. B.* 212. *F.* 8 *Co.* 88. *b.* *Cro. Car.* 435.

So, if a Son ſurvives, and is ſeiſed and dies without Iſſue, his Brother need not ſhew that he died without Iſſue, but it is ſufficient to name himſelf Son and Heir. *F. N. B.* 216. *C.* *Reg.* 238, 9.

So, it is ſufficient, if it is not ſaid by expreſs Words, that the Anceſtor is dead; for *Son and Heir* ſuppoſes it. *Reg.* 243. *a.*

In *Formedon* in Remainder the Demandant ought to mention all *meſne* Remainders. 8 *Co.* 88. *a.* (3 E. 3.) In Remainder or Reverter.

A *Formedon* in Remainder muſt ſay that the prior Donee died without Iſſue. *Reg.* 239.

So in *Formedon* in Reverter, as Heir, he muſt mention his Pedigree from the Donor. 8 *Co.* 88. *a.*

And in *Formedon* in Reverter, he muſt alledge the *Eſplees* in the Donor and in the Donee. *F. N. B.* 220. *C.*

If the Tenant in Tail diſcontinued, the *Formedon* ſhall ſay, *Remanſit Jus*, if not, *quod Tenementa remanſerunt*. 8 *Co.* 86. *a.*

But if the Remainder is executed, the Demandant ſhall have a *Formedon in Diſtender*, without mentioning the precedent Remainders. 8 *Co.* 88. *a. Reg.* 243. *b.* 244. *a.*

So in *Formedon* in Remainder, or Reverter, the Demandant need not name the Iſſues of the Donee, but it is ſufficient to ſay, *eo quod* the Donee died without Iſſue. *Dy.* 216 *a.* 8 *Co.* 88. *a.*

And in *Formedon* in Remainder, or Reverter by Huſband and Wife, the Reverter may be alledged to the Wife only, or to both. *R. Hob.* 1.

(3 E. 4.) Pleas.

After Count, the Tenant may imparl.

And after Imparlance (at leaſt after a ſpecial Imparlance) may demand a View. *Lut.* 857. *Vide ante*, (2 Y 3.)

And after View may caſt an Eſſoin. *Vide Ante*, 2 Y 3.)

At the Day given by Eſſoin, the Demandant counts *de novo*, and the Tenant may imparl.

At the Day by Imparlance, the Tenant muſt plead or vouch.

He may plead in Abatement, as in other real Actions. *Vide Abatement.*

He may plead in Bar the general Iſſue, *Ne dona pas*. *Lut.* 851. *b.*

Or a ſpecial Plea: As, a *Common Recovery*. *Noy* 1.

Gift after Diſſeiſin, and *a Recovery by the Diſſeiſee ſubſequent to the Gift.*

An Exchange by the Anceſtor of the Demandant with the Anceſtor of the Tenant for theſe Lands, and that the Demandant has the Lands given in Exchange. (*Vide Co. Lit.* 384. *b.*)

An Eſtate prior to the Gift, and after the Gift a Remitter to the prior Eſtate.

That the Donor was ſeiſed after the Gift, and made an Eſtate to the Tenant, &c. in Fee.

Warranty by Way of Rebutter. (*Vide Co. Lit.* 384. *b.* 385. *a.*)

So, in *Formedon* in Diſcender, a *Fine with Proclamations*. *Vide Co. Lit.* 372.)

Or, a *Feoffment with Warranty and Aſſets*. (*Vide Co. Lit.* 374, 375, 384. *b.*)

So, in *Formedon* in Remainder, or Reverter, a *collateral Warranty*. (*Vide Co. Lit.* 372.)

Or, a *Fine and Nonclaim for five Years after Title accrued*. (*Vide Co. Lit.* 372. *b*)

Or, a *Fine with Warranty, which deſcended upon the Demandant*. *Lut.* 852. *b.*

If the *Formedon* is of a Moiety, tho' it ſhews the Uſes of the other Moiety, the Defendant need not plead but to the Moiety demanded. *Sav.* 86.

(3 E. 5.) Voucher.

If the Tenant vouches, a Summons *ad Warrantizandum* iſſues againſt the Vouchee, returnable at the ninth Return after. (*Vide Com. Att.* 217. *Edit.* 1695.)

And if *Nichil* is returned, an *Alias*, *Pluries*, and then a *Sequat' ſub ſuo Periculo*, and at the Return of the *Sequat'* the Vouchee may be eſſoined.

Then the Demandant counts againſt the Vouchee, who may imparl, plead, and vouch over, *&c.*

(3 F) Proceeding in Partition.

(3. F. 1.) The Proceſs.

WHEN Partition lies, between whom and how it ſhall be made, *Vide Parcener*, (C. 1, &c.)

The Proceſs in Partition is Summons, Attachment, and Diſtreſs infinite. *F. N. B.* 62. *M.* 1 *Brownl.* 156.

At the Return of the Summons, each Defendant may caſt an Eſſoin. 1 *Brownl.* 156.

Or, if he does not, then at the Return of the *Pone*. *Com. Att.* 168.

If the Defendant does not appear upon the *Pone*, a *Diſtringas* ſhall iſſue, upon which he ſhall be amerced to five Pounds, which ſhall be doubled *toties quotns. Comp. Att.* 168.

If one Defendant caſts an Eſſoin, the other may have another Eſſoin; for the *St. W.* 1. 43 does not extend to an Action for Diviſion of Land. *R. Hob.* 8.

A Writ of Partition muſt be againſt the Tenant of the Freehold. *Co. Lit.* 167. *a. Vide Parcener*, (C. 6.)

But it is ſufficient, that the Writ is general, tho' it is by Jointenants, or Tenants in Common. *R. Cro. El.* 743, 759.

(3 F. 2.) Declaration.

When the Defendant appears, the Plaintiff declares againſt him.

Declaration by one Parcener or Jointenant againſt the others, muſt ſhew how they are Parceners or Jointenants. *Cro. El.* 64. *Vide Ante*, (C. 34.)

But not where they are Tenants in Common; for they claim by ſeveral Titles, and one is not conuſant of the other's Title. *R. Cro. El.* 64.

So, if they are Parceners, *&c.* a Declaration, which ſhews that it was the Inheritance of the Common Anceſtor in Tail, is ſufficient, without ſaying how the Eſtate-Tail commenced. *R. Dy.* 79. *b.*

But, if the Declaration ſays that the Plaintiff and Defendant were ſeiſed in Fee, where it is found, that the Defendant has only in Tail, the Writ abates. *R. Cro. El.* 760.

(3 F. 3.) Plea.

To the Declaration the Defendant may plead *Non tenent inſimul.*

But by the *St.* 8 & 9 *W.* 3. 31. Plea in Abatement ſhall not be admitted in Partition:

And a Writ of Partition ſhall not abate by the Death of Defendant.

So the Defendant cannot plead another Writ of Partition depending brought by him againſt the Plaintiff. *R.* 1 *Brownl.* 158.

Nor, *Non demiſit*, for this amounts to *non tenent inſimul.* *R.* 1 *Brownl.* 157.

(3 F. 4.) Judgment.

After Confeſſion of the Action or Iſſue tried for the Plaintiff, there ſhall be Judgment *quod Partitio fiat. Co. Lit.* 167. *b.*

And thereon a Writ ſhall iſſue to the Sheriff to make Partition. *Co. Lit.* 167. *b.*

Upon this Writ the Sheriff ought to attend with the Jury in Perſon. *Lit. Sec.* 248.

But now, by the *St.* 8 & 9 *W.* 3. 31. If the Sheriff is ſick, *&c.* the Under-Sheriff with two Juſtices of the Peace may make Partition:

And they are obliged to attend, on Pain of 5*l.* and ſhall have Fees, *&c.*

The Sheriff, after Notice to the Parties, in their Preſence, *ſi intereſſe voluerint*, muſt by the Oath of the Jury divide the Tenements into equal Parts, with Regard to the Value, and deliver one Part to each Parcener in Severalty. *Co. Lit.* 167. *b.*

So he, who officiates as Under-Sheriff with two Juſtices, ſhall do under the *St.* 8 & 9 *W.* 3. *R. per C. B. M.* 6 *Geo.*

And if the Manor to be divided lies intermixt with other Lands, ſo that the Jury don't know the Limits, Quantity, *&c.* of the Tenements to be divided, and the Owner of the intermixt Lands will not ſhew the Certainty of his Land, yet the Jury ought to make Partition as well as they can. *Dy.* 266. *a.*

After Partition made, it muſt be returned to the Court, under the Seals of the Sheriff and twelve Jurors. *Lit. Sec.* 249.

After Return of the Partition by the Sheriff, there ſhall be final Judgment *Quod Partitio prædicta ſtabilis imperpetuum teneat'*. *Co. Lit.* 168. *a.*

So by the *St.* 8 & 9 *W.* 3. 31. If no Tenant enters his Appearance within 15 Days after the Return of the Attachment, upon Affidavit of Notice to the Tenant, and Copy thereof left with the Tenant of the Land 40 Days before the Return (if he be not Demandant) the Plaintiff may declare, and the Court examine his Title, *&c.* and give Judgment by Default with a Writ of Partition to ſet out his Part in Severalty:

And after ſuch Writ executed upon eight Days Notice to the Tenant of the Land, and returned, Judgment final ſhall be given, which ſhall conclude all Perſons after Notice, tho' not named in the Proceeding, and tho' the Title of the Tenant be not truly ſet forth.

Provided if any within a Year after Judgment, or if Infant, *Covert*, *Nonſane*, or out of the Realm, within a Year after Inability removed, by Motion ſhew a probable Bar, or that the Plaintiff had not Title to ſo much, the Court may admit him to plead, *&c.* or, if he ſhews an Inequality of Partition, the Court may award a new Partition.

(3 G) Proceeding in Perambulatione facienda.

A Writ *de Perambulatione facienda* lies, when two Lords are in Doubt of the Limits of their Lordſhips, *Vills*, *&c.* and by Conſent appear in *Chancery*, and agree that a Perambulation be made between them; their Conſent ſhall be inrolled in *Chancery*, and thereupon a Writ *de Perambulatione facienda* ſhall be directed to the Sheriff to make Perambulation, *aſſumpt' ſecum* 12 *Militibus*, *&c. per Met' & Diviſ'*, *&c.* *F. N. B.* 133. *D.* 134. *C.*

Or the King may grant a Commiſſion to others than the Sheriff to make Perambulation. *F. N. B.* 134. *A.*

And if the Parties cannot appear in Perſon in *Chancery*, a *Dedimus Poteſtatem* may iſſue to take their Conſent, which ſhall be certified, and thereupon a Commiſſion or Writ ſhall be awarded. *F. N. B.* 134. *C.*

So it may be awarded to make Perambulation of two or three Counties. *F. N. B.* 134. *B.*

So to make Perambulation of a Foreſt. *Vide Chaſe*, (G. 1.)

The Return upon ſuch Writ or Commiſſion ought to aſcertain the Diviſion by Metes and Bounds.

And Perambulation made binds all Parties to it and their Heirs, if the Parties have a Fee. *F. N. B.* 134. *A.*

But Perambulation by Conſent of the Tenant for Life does not bind him in Reverſion. *F. N. B.* 134. *B.*

Proceeding in *Pone*, *Vide Poſt*, (3 K. 6.)

(3 H) Proceeding in Prohibition.

PROHIBITION is an Action founded upon an Attachment for a Contempt, where the Defendant proceeds after a Writ of Prohibition ſerved upon him.

[If on ſhewing Cauſe, the Rule is made abſolute, and Plaintiff directed to declare, yet Defendant may refuſe to accept it, and apply to ſtay Proceedings, and ſubmit; and the Court will ſtay Proceedings thereupon, without Coſts. *Gegge* v. *Jones*, *H.* 14 *G.* 2. *Str.* 1149.]

And the Plaintiff muſt ſue *qui tam*, *&c.* becauſe a Contempt to the King is ſuppoſed. 12 *Co.* 61. *Vide Prohibition*, (I.)

If ſeveral Writs of Prohibition are ſued againſt divers Perſons in the ſame Suit, he muſt declare againſt them ſeverally. *F. N. B.* 40. *I.*

So, if the ſame Writ is ſerved in ſeveral Counties, and they proceed ſeverally. *Ibid.*

So, Several cannot join in Prohibition, where the Complaint is ſeveral. *R. Cro. Car.* 162.

So the Plaintiff muſt alledge a *Venue*, where the Prohibition was ſerved, and the Proceeding in Contempt was, otherwiſe it will be Error, tho' there was Judgment upon a Writ of Inquiry and Damages found. *R.* 1 *Vent.* 348, 350. *Raym.* 387. 2 *Jon.* 128.

[In Prohibition, the Contempt is but Form, and the Jury need not give any Verdict about it. *Statford* v. *Neale*, *M.* 8 *G.* *Str.* 482.]

[If the Iſſue lies on Plaintiff, who does not appear at Trial, he muſt be called, and nonſuited; and if Defendant puts in his Record, enters into his Proof, has a Verdict and Judgment, it is irregular, and ſhall be ſet aſide. *Gardener* v. *Davis*, *P.* 24 *G.* 2. 1 *Wilſ.* 300.]

(3 I) Proceeding in Quare Impedit.

(3 I. 1.) The Proceſs.

ALL Writs of Advowſon of a Church, *viz.* Right of Advowſon, *Quare Impedit*, and Aſſiſe of *Darrein Preſentment*, by a common Perſon ſhall be in *C. B.* *Reg.* 29, 30.

But a *Quare Impedit* by the King may be in *B. R.* or *C. B.* *F. N. B.* 32. *E.*

The Proceſs in *Quare Impedit* is Summons, Attachment, and Diſtreſs. 1 *Brownl.* 158. 2 *Inſt.* 124.

And by the Common Law it was Diſtreſs infinite. 2 *Inſt.* 124.

But now by the *St.* 52 *H.* 3. 12. *Marl.* If the Defendant does not appear, nor caſt an Eſſoin on the firſt Diſtreſs, or before, there ſhall be Judgment for the Plaintiff, and a Writ to the Biſhop. 2 *Inſt.* 124. *Dy.* 353. *b.* 1 *Brownl.* 158. 2 *H.* 4. 1. *b.*

Tho' upon the Summons or *Pone*, the Defendant was not ſummoned, but *Nihil* returned. 1 *Brownl.* 158. 2 *Inſt.* 124.

By the *St. Marl.* the Sheriff ought to make Summons by good Summoners, and return their Names upon the Original. 1 *Brownl.* 158.

And if the Sheriff does not do it, *Diſceit* lies againſt him. 1 *Brownl.* 158. *Dy.* 353. *b.*

The Summons ſhall be ſerved upon the Defendant, or at the Church-Door. 1 *Brownl.* 158. 2 *Mod.* 265.

And if he be not actually ſummoned, there ſhall not be Judgment upon Default at the Diſtreſs. *R.* 1 *Mod.* 248. 2 *Mod.* 264.

If there are two Defendants, and one does not appear, *&c.* upon the firſt Diſtreſs, the Plaintiff ſhall have Judgment and a Writ to the Biſhop, tho' the other Defendant appears, and perhaps ſhall have a Writ to the Biſhop alſo. 2 *Inſt.* 124, 5. *R. Bendl. pl.* 136.

And

And if all the Defendants make Default upon the Diſtreſs, the Plaintiff ſhall have Judgment againſt all; for all are ſuppoſed Diſturbers. *R. Mo.* 81.

But upon Default after Continuance, there ſhall be a *Diſtringas* inſtead of a *Petti Cape*. 2 *H.* 4. 1. *b.*

But before a Writ to the Biſhop, the Plaintiff ought to make Title, and there ſhall be Proceſs to inquire of four Points. *R. Mo.* 81. *Vide Poſt.* (3 I. 11.) Shall make Title. *Bend. pl.* 136, 207.

At the Return of the Summons, or *Pone*, the Defendant may have the common Eſſoin. 2 *Inſt.* 125. 1 *Brownl.* 159. *Vide Ante*, (2 Y. 1.)

Or an Eſſoin *de malo Lecti*. *Semb.* 2 *Inſt.* 124.

And if there are ſeveral Defendants, one may be eſſoined after another. 1 *Brownl.* 159.

But the Defendant ſhall not have an Eſſoin *de Servitio Regis*, *in Terrâ ſanct'*, or *ultra Mare*. 2 *Inſt.* 125. 1 *Brownl.* 160.

Nor ſhall have Protection, nor his Age. 1 *Brownl.* 160.

So by the *St.* 12 *Ed.* 2. *St.* 2. after Default and Reſummons the Defendant ſhall not have an Eſſoin. *R. Cro. Car.* 341.

If the Defendant caſts an Eſſoin, the Plaintiff ought to adjourn it for fifteen Days, otherwiſe he ſhall be nonſuited. 1 *Brownl.* 159. *Dal.* 81, 2.

And at the Day given by the Adjournment, the Defendant need not appear, nor before the Return of the *Diſtringas*. 1 *Brownl.* 159.

By the Common Law, and now by the *St. Art. ſup. Chart.* 15. In Summonſes and Attachments, there ought to be 15 Days excluſive at leaſt between the *Teſte* and Return, in which Time, at 20 Miles *per Diem*, any one may come from the extreme Part of *England*. 2 *Inſt.* 567.

By the *St. Marl.* 52 *H.* 3. 12. In *Darrein Preſentment*, or *Quare Impedit*, there ought to be only 15 or 21 Days before the Return.

Or a longer Day may be given by Conſent of Parties. 2 *Inſt.* 124.

But ſuch Conſent ought to appear upon Record. *Ibid.*

The Summons ought to be teſted the ſame Day it iſſues, that there may be no Prejudice in reſpect of *Lapſe*. *Reg.* 30. *a.* *Bro. Qu. Imp.* 151.

(3 I. 2) Original.

An Original in *Quare Impedit* may be ſued *de Eccleſia*, which always imports a Rectory, or Parſonage. *F. N. B.* 32. *H.*

So it may be by Common Law, or at leaſt by the *St. W.* 2. 5. *de Capellis, Præbendis, Vicariis, Hoſpital', Priorat', Abbat' et aliis Domibus, quæ ſunt de Advocationibus aliorum.* 2 *Inſt.* 363. 2 *Rol.* 98.

And therefore of an *Archdeaconry*. *R.* 1 *Leo.* 205. 1 *And.* 241.

The Writ ought to name the Advowſon truly as it is, *viz. Eccleſia, Vicar', &c. F. N. B.* 32 *H.* 33. *F. G.*

Yet, if it be in the Disjunctive, *ad Eccleſiam ſive Hoſpital'*, it is good. *R. Cro. El.* 791.

Yet the Writ may be general and the Count ſpecial: As, if a *Quare Impedit* be brought by him who has only a Moiety of the Advowſon, or the Advowſon *Medietatis Eccleſiæ*, the Writ may be general, *præſentare ad Eccleſiam*, and the Plaintiff ſhall count upon the ſpecial Matter. *F. N. B.* 33. *A.* 5 *Co.* 102. *b.* 10 *Co.* 135.

So, if the Plaintiff has only the Nomination, Collation, *&c.* and not the Right of Preſentation, the Writ ſhall ſay *preſentare*, and the Plaintiff ſhall count ſpecially. *F. N. B.* 33. *B. C. D. E.* and if it be *nominare*, it abates. 1 *Brownl.* 159.

So the Writ may ſay generally, *quæ ad Noſtram ſpectat' Donationem*, and the Count declare by what Title. *R. Cro. El.* 241. *R.* 3 *Lev.* 377. 1 *Leo.* 227.

But if there be a diſtinct Patron and Incumbent of one Moiety or Part of a Church, and another Patron and Incumbent of the other Moiety or Part, the Writ is good, if it is ſpecial *Præſentare ad Medietat', &c. Eccleſiæ.* *R.* 10 *Co.* 135. *b.*

And *ad Rector' Medietat'*, or *Medietat' Rector'*, is of the ſame Import. 4 *Co.* 75.

In what County it ſhall be brought, *Vide Action*, (N. 1, &c.)

If it abates by Death, it may be brought by *Journies Accompts*. 1 *Brownl.* 158.

So Summons and Severance lies, if one Plaintiff will not ſue. *Ibid.*

So the Plaintiff may have ſeveral *Quare Impedits* againſt every Defendant. *Vide Abatement*, (H. 24.)

(3 I. 3.) Declaration in *Quare Impedit*.

(3 I. 3.) For and againſt whom.

If one Defendant appears before the others, the Plaintiff may declare againſt him *ſimul cum, &c.* 1 *Brownl.* 159.

A *Quare Impedit* ſhall be brought by the King, in Right of his Crown, or upon a Title by *Lapſe*.

Or by a common Perſon.

Several, who have the ſame Title, may join. *Mo.* 184.

A Man, who has the Nomination, and another, who has the Preſentation, may join, if a Stranger preſents. *Dy.* 48. *a. in Marg.*

Or have ſeveral *Quare Impedits*. *Mo.* 49. *Dal.* 48.

An Executor or Adminiſtrator may have a *Quare Impedit* upon an Avoidance in the Life-time of the Teſtator, *&c.* *R. Sav.* 95. *Lut.* 1. *Sav.* 118. 1 *Leo.* 205. 1 *And.* 241.

If a Grant of the next Avoidance be to two, and one releaſes to the other, the Releaſee alone may have a *Quare Impedit*. *R. Mo.* 467.

A *Quare Impedit* is uſually ſued againſt the Patron, who preſents, the Incumbent who was preſented, and the Biſhop. 1 *Brownl.* 159.

But the Writ does not abate, if the Biſhop is omitted; and therefore it will be well to omit him, if the Church is full. *Hob.* 320.

Yet the Biſhop, if he is omitted, may preſent by *Lapſe*, except when a *Ne admittas* is ſued by the Plaintiff within ſix Months. *Reg.* 31. *a.* *Co. Lit.* 344. *b.* *Hob.* 320.

Semb. That the Biſhop may preſent by Lapſe tho' a *Ne admittas* be delivered within ſix Months; but he cannot admit the Clerk of the Party, or of any other preſented within ſix Months. *F. N. B.* 48. *L.*

So the Writ may be againſt the Patron alone, omitting the Incumbent; but then the Plaintiff ſhall not have a Writ to the Biſhop to remove him, if he was admitted, *pendente Lite*. *Co. Lit.* 344. *b.* *F. N. B.* 35. *C.*

So in a Writ of Right of Advowſon. the Incumbent ſhall not be named. *Hob.* 319.

Nor ſhall be removed, if the Plaintiff recovers. *Hob.* 319. *Sav.* 109.

So it may be againſt the Incumbent alone, where the Patron is not diſturbed, nor has Prejudice by the Suit: As, in *Quare Impedit* upon an Avoidance by Simony of the Incumbent. *Semb. Lut.* 1089. *R.* 3 *Lev.* 16, 206.

So, in *Quare Impedit* by him who has the Nomination to a Church in the Preſentation of an Abbot, which comes to the King, and he preſents a Clerk, without any Nomination, the *Quare Impedit* ſhall be againſt the Incumbent alone; for the King cannot be a Diſturber. *R. Dy.* 48. *a.*

So, where the Incumbent is collated by *Lapſe*, or is the only Diſturber. 1 *Leo.* 45. *R.* 2 *Leo.* 58. *Sav.* 108.

So, in every Caſe, where the Intereſt or Eſtate of the Patron is not deveſted by the Judgment in the *Quare Impedit*. *R.* 7 *Co.* 26. *a.*

And it is ſafeſt not to make more Defendants than neceſſary. *Hob.* 320.

If the Patron is not named a Defendant, when he ought, if it be not pleaded in Abatement, it ſhall not be Error. *R.* 2 *Cro.* 651.

So, where the King is Patron, it ſhall be ſued againſt the Preſentee only. *Keil.* 53. *a.*

The

(3 I. 4) Muſt ſhew a Title to the Advowſon.

The Plaintiff in *Quare Impedit* muſt alledge a Title to the Advowſon in ſome one, from whom he claims by Deſcent. *Hob.* 102. For a Preſentment without a Title to preſent is not ſufficient. *Vau.* 57.

And generally he ought to alledge a Seiſin in Fee. *Vide Ante.* (E. 19, &c.)

But, that he was ſeiſed generally, ſhall be intended in Fee. 8 *H.* 5. 4. *b.*

So Seiſin for Life is ſufficient. *Semb.* 8 *H.* 5. 4. *b.*

Or by Purchaſe.

Or by Grant of the next Avoidance. 8 *H.* 5. 4. *b.* *Lut.* 1.

Or by Grant of an Eſtate for Life, for Years, or other particular Eſtate. *Semb.* 5 *Co.* 98. *a.*

Or he may alledge a Title to the Advowſon in himſelf. *Hob.* 102.

And a Title to the Advowſon, as well as Preſentment, ought to be alledged in the Caſe of the King, as well of a common Perſon. *Vau.* 57.

So the King ought to alledge in what Right he is ſeiſed. 1 *Leo.* 227.

If the Plaintiff claims by a Gift in Tail, he muſt alledge a Title to the Advowſon in the Donor, and derive his Title under the Donee. *Hut.* 31.

So, if the Plaintiff claims a Right to preſent againſt common Right, he muſt ſhew the Commencement of it: As, if he alledges Preſentations by Turns, he muſt ſhew how this commenced, by Preſcription, Compoſition, or otherwiſe. *Dy.* 299. 3 *Leo.* 163, 4.

Yet if *A.* was ſeiſed of a Manor to which an Advowſon, *viz.* to preſent twice, belongs, *&c.* it is ſufficient; for this ſhews a Preſcription. *R. Dy.* 299. *a.*

So the Plaintiff muſt ſhew whether the Advowſon be *Appendant*, or in *Groſs*, *Semb. Lut.* 1. *Vau.* 7, 8.

But if the King intitles himſelf to a Preſentation by a Simoniacal Contract, it is ſufficient to alledge a Preſentment by ſuch an one, *cui de Jure pertinuit*, without ſhewing what Title he had to the Advowſon; for the King is a Stranger to it. *Semb. Lut.* 1093.

So, if the Plaintiff alledges that he was ſeiſed of the Advowſon, *ſcilicet* to preſent every firſt Turn, it will be good. *R. Mo.* 867.

So the Plaintiff muſt ſhew a Title in himſelf before the Avoidance; and therefore if the Acceptance of a Plurality, by which the Church is void, be alledged at a Day before the Grant of the next Avoidance, by which the Plaintiff claims, it will be bad. *R. after Verdict for the Plaintiff.* *Dy.* 129. *b.* *Bend. pl.* 79.

If there are ſeveral Plaintiffs, and they vary in Title, the Writ abates. *R. Mo.* 184.

If Tenants in Common make Compoſition to preſent by Turns, the Plaintiff in his Count muſt mention the Compoſition, before it is executed. *Dy.* 29. *a.*

So, in every Caſe where the Plaintiff ſhews a Right to preſent by Turn, he ought regularly to ſhew how ſuch Right commenced, by Preſcription, Compoſition, or otherwiſe. *Semb. Dy.* 259. *b.* 299. *b.*

And it may commence between Parceners, Joint-tenants, and Tenants in Common, by Record, or by Deed. *R.* 1 *Sal.* 43.

But after every Tenant in Common has preſented in his Turn, the Compoſition is executed, and it need not be ſhewn. *Dy.* 29. *a.* 1 *Sal.* 43.

So a Compoſition by Parceners need not be ſhewn; for it may be without Deed. *Dy.* 29. *a.* 1 *Sal.* 44.

So, where the Plaintiff claims a Turn to an Advowſon appendant, he need not ſhew the Commencement of the Preſentation by Turns, whether it was by Preſcription, Compoſition, or otherwiſe; for the Appendancy imports a Preſcription. *Dy.* 299.

And the Plaintiff may claim the entire Advowſon when it is his Turn. *R.* 1 *Brownl.* 165.

So in *Quare Impedit* by a Grantee of the next Avoidance, he muſt ſhew that it is the next Avoidance. *Semb. Dy.* 129. *b.*

(3 I. 5.) Muſt alledge a Preſentment.

The Plaintiff in *Quare Impedit* ought always to alledge a Preſentment by himſelf, or by his Anceſtor, or ſome other under whom he claims. *Vau.* 17, 57.

Tho' the Advowſon be veſted in the Patron by Act of Parliament. *Semb.* 3 *Lev.* 436. *Cont.* 21 *Ed.* 4. 3. *b.*

And regularly a Preſentment ought to be alledged to have been by him who has the Inheritance. 5 *Co.* 97. *b.*

And it may be alledged to have been by him, from whom the Plaintiff purchaſed. 2 *Inſt.* 356.

So, if a Preſentment be alledged by a Tenant for Life, for Years, or other particular Tenant, it is ſufficient for him in Reverſion. 5 *Co.* 98. *a.*

So, if the Plaintiff ſhews a Grant of the next Avoidance, and alledges a Preſentment by a Grantee, it is ſufficient for him, who claims under the Grantor; for he preſented in Right of the Grantor. *R.* 5 *Co.* 97. *b.* *Cro. El.* 518. *Mo.* 456. *Semb. Dy.* 106. *a.*

So in *Quare Impedit*, a Purchaſer may alledge a Preſentment by the Vendor. 2 *Inſt.* 356.

So in *Quare Impedit* by a Tenant for Life, or Years, it is ſufficient that the Plaintiff alledges Seiſin in the Leſſor, the Demiſe, and a Preſentment by the Leſſee himſelf. *Dub. Hob.* 285. *R.* 1 *Leo.* 230.

The Plaintiff may alledge Preſentments by the Grantor and the Grantee of a particular Eſtate, and it will not be double. 5 *Co.* 98. *a.* *Cro. El.* 518.

If the Plaintiff alledges a Preſentment, without a precedent Title, he muſt ſay that it was *Tempore Pacis.* 1 *Mod.* 230.

But he need not, if a precedent Title is alledged. *R.* 1 *Mod.* 230.

If a Preſentment be alledged by a common Perſon, he muſt ſay, that the Clerk was thereon inſtituted, and inducted. *Bend. pl.* 297.

If by the King, or by him, who intitles himſelf by the King, *That he was inſtituted*, is ſufficient. *Ibid.*

The laſt Preſentment regularly ſhall be mentioned, and therefore if the Biſhop preſents by *Lapſe*, upon the next Avoidance, the Patron in *Quare Impedit* ſhall make mention of that. 3 *Leo.* 18. *Dal.* 75.

But if there be an Uſurpation upon the King, a Grantee of the next Avoidance need not mention that, but only the laſt Preſentation by the King. 3 *Leo.* 18. *Hob.* 140. *R. Dal.* 75.

[The Crown as well as a Subject muſt alledge a Preſentation; and a *Commendam retinere* is not ſufficient. *Rex* v. *Biſhop of Landaff*, *H.* 8 *G.* 2. *Str.* 1006.]

[But the Want of it is cured by Verdict. *Ibid.*]

(3 I. 6.) And Diſturbance.

The Plaintiff in *Quare Impedit* ought to alledge a Diſturbance.

And, if it be by an Executor or Adminiſtrator upon an Avoidance in the Life of the Teſtator, a Diſturbance in the Life of the Teſtator is ſufficient. *R. Sav.* 95. *Lut.* 2.

But he ſhall not ſay, *in Retardatione Executionis Teſtamenti.* *R. Sav.* 95. *R.* 1 *Leo.* 205.

(3 I. 7.) Pleas in *Quare Impedit.*

(3 I. 7.) In Abatement. Miſnomer, &c.

To a Declaration in *Quare Impedit* the Defendants may imparl.

And afterwards may join in Plea, or plead ſeverally. *Bro. Qu. Imp.* 157, 165.

The Defendants ſhall plead in Abatement, or to the Action.

An Ordinary cannot plead in Abatement, or caſt an Eſſoin, without making himſelf a Diſturber. *Hob.* 200.

In Abatement the Defendant may plead, that the Plaintiff or Defendant is miſnamed, or has a falſe Addition to his Name. *Bend. pl.* 109.

Variance between the Count and Writ. *Sal.* 559.

That there are two Churches, and neither without Addition, &c. or, that the Church is miſnamed. (*Vide Abatement*, (H. 19, 23.)

So the Incumbent may plead in Abatement that ſuch an one is not named a Defendant, when he ought to be. 7 *Co.* 25. *b.* *Hob.* 316. *Vide ante*, (3 I. 3.)

But

But the Biſhop cannot plead in Abatement that the Patron is not named. *Hob.* 317.

So he may plead another *Quare Impedit* depending for the ſame Diſturbance. R. 1 *Brownl.* 163. *Vide Abatement*, (H. 24.)

So, tho' it is for another Diſturbance for the ſame Avoidance. *R. Hob.* 137.

Or adds another Defendant. *R. Hob.* 138.

So he may plead in Abatement *Darrein Preſentment*. *Vide Abatement*, (H. 26.)

(3 I. 8.) Plenarty.

So he may plead Plenarty, before the Writ purchaſed, of the Preſentment of the Plaintiff himſelf. *Th. D. l.* 11. *c.* 42. *ſ.* 20.

Tho' he does not ſay, that the Plenarty was for ſix Months. *Th. D. l.* 11. *c.* 42. *ſ.* 20. *R.* by Common Law; for by Inſtitution and Induction, or by Inſtitution only, againſt a common Perſon, the Church is full, and the Plaintiff ſhall loſe his Preſentation *hâc vicé* for ever. *R.* 6 *Co.* 49. *a.*

So he may plead Plenarty for ſix Months before the Purchaſe of the Writ, of the Preſentment of the Defendant himſelf. *Th. D. l.* 11. *c.* 42. *ſ.* 22.

Or, of the Preſentment of a Stranger. *Co. Ent.* 498. *b.*

By the Common Law Plenarty before the Writ for any Time was a good Plea. 2 *Inſt.* 360.

But by the *St. W.* 2. 5. it muſt be a Plenarty for ſix Months.

And it ought to be ſix Months before the firſt Writ, if another Writ be ſued by *Journeys Accompts*. *Th. D. l.* 11. *c.* 42. *ſ.* 8.

But, generally, Plenarty is no Plea againſt the King. 2 *Inſt.* 361.

Tho' he claims in Right of his Ward, *&c.* and not *in Jure Coronæ*. 2 *Inſt.* 361. *R.* 1 *Leo.* 226.

Yet, if the Defendant alledges a Right of Advowſon in himſelf, he may plead Plenarty for ſix Months againſt the King. *Th. D. l.* 11. *c.* 42. *ſ.* 7, 17. *Dub. ſ.* 3.

So, by the Law, Plenarty ſhall be a good Plea againſt the Queen. 2 *Inſt.* 361.

So Plenarty, upon a Collation by a Biſhop by Wrong, is no Plea. *R.* 1 *And.* 243. *Sav.* 118.

So, tho' the Biſhop collated after a *Lapſe*. *Dub.* 1 *And.* 243.

If the Defendant pleads Plenarty, he muſt ſhew of whoſe Preſentment. *Th. Dig. l.* 11. *c.* 42. *ſ.* 2.

And at what Time. *Ibid.*

So, regularly, if the Defendant pleads Plenarty of the Preſentment of an Eccleſiaſtical Perſon, he ought to ſhew the Right of Patronage in him. *Th. D. l.* 11. *ca.* 42. *ſ.* 4, 5.

So, if he pleads Plenarty of the Preſentment of himſelf by ſuch an one. *R.* 1 *Brownl.* 162.

But a Lay Patron may plead Plenarty of his own Preſentment, without ſhewing a Right to the Patronage in him. *Th. D. l.* 11. *c.* 42. *ſ.* 4.

Plenarty ſhall not be intended, if it is not pleaded. *Jon.* 332.

(3 I. 9.) In Bar.

In Bar of a *Quare Impedit*, the Biſhop, to ſhew he is not a Diſturber, may plead, that he claims nothing but as Ordinary. *Co. Ent.* 498. *d. Hob.* 198. 38 *Ed.* 3. 2. *Keil.* 43. *a.*

The Ordinary muſt diſclaim or admit himſelf a Diſturber. *Hob.* 320. *Vide Ante*, (3 I. 7.)

If he refuſes a Clerk without Cauſe, he is a Diſturber. 1 *Leo.* 230.

[If the Biſhop pleads that the King made *A.* Dean of, *&c.* whereby he became poſſeſſed of the Church in Queſtion, he muſt ſhew that the Church is a Member of the Deanery. *Rex* v. *Archbiſhop of Ardmagh*, *T.* 3 *G.* 2. *Str.* 837.]

The Clerk may plead, that he claims Nothing but as *Perſona imperſonat' ex Præſentatione* of ſuch an one.

Upon ſuch Plea by the Biſhop, the Plaintiff may have Judgment againſt him with a Writ to the Biſhop, but *Ceſſat Executio* till the other Pleas are determined. *Vau.* 6. *Hob.* 320. *Keil.* 43. *a. Vide Poſt*, (3 I. 12.)

If a *Ceſſat Executio* is not entred, it is only Form. *R.* 1 *Rol.* 363.

And if there be not a *Ceſſat Executio*, it is Error, if Execution be before the other Pleas are determined. 1 *Rol.* 363.

So every other Defendant may plead *Quod non impedivit*. *Win. Ent.* 709. *Vau.* 58.

But, if the Biſhop diſclaims, and the Plaintiff does not accept his Diſclaimer, but will maintain him a Diſturber, and it is found againſt the Plaintiff, he ſhall not have a Writ to remove a Clerk collated *pendente Lite*. *Hob.* 320.

If one Defendant pleads *Non impedivit*, and it is found againſt him, there ſhall be a Writ to the Biſhop with a *Ceſſat Executio* till the Plea between the others is determined. 1 *Brownl.* 159.

So the Plaintiff upon ſuch Plea may have a Writ to the Biſhop, or by Replication maintain the Diſturbance in order to have Damages. *Vau.* 58.

So the Defendant may plead in Bar a Releaſe.

So the Defendant may plead, that he is Parſon *imparſonee*, and traverſe his Reſignation.

If the Incumbent pleads, that he is *Perſona imperſonata*, he ought to ſay of whoſe Preſentation. *Hob.* 320.

So the Defendant may plead in Bar a Preſentation upon Title and traverſe.

But if the Incumbent pleads a Preſentation of ſuch an one, he cannot make Title except to the ſame Patron, by whom he was preſented. *Jon.* 5. *Hob.* 321.

And therefore, if he pleads himſelf to be *Perſona imperſonata* of the Preſentment of ſuch an one, the Plaintiff may reply that he was not preſented by him. *R. Jon.* 5. But it will be more formal to ſay, that he is not *Perſona imperſonata*, or to ſhew by whom he was preſented, and then traverſe the Preſentment alledged. *Hob.* 321. Yet the other Way is ſufficient on a General Demurrer. *Hob.* 321.

So by Common Law the Incumbent or Biſhop ſhall not plead to the Right of Patronage; for every one ought to plead apt Matter, and he has Nothing in the Patronage. 7 *Co.* 26. *a.* *Hob.* 318. *Jon.* 5.

Yet, by the *St.* 25 *Ed.* 3. 7. To avoid feint Pleading in the Patron, the Archbiſhop, Biſhop, *&c.* and Poſſeſſor may counterplead the Title of the King.

And therefore every Incumbent inſtituted and inducted may plead to the Right of Advowſon. 7 *Co.* 26. *a.* *Hob.* 319.

So an Incumbent by Collation. *Hob.* 319.

So, if he be inſtituted; for by Inſtitution the Church is full againſt a common Perſon; and the *St.* 25 *Ed.* 3. 7. by Equity extends to common Perſons. 7 *Co.* 26. *a.* *Dy.* 1. *b. in Marg.*

Otherwiſe, if he was only preſented. *R. Dy.* 1. *b.*

Or, in the Caſe of the King, was only inſtituted. *Hob.* 319.

Or, if after Inſtitution he reſigns, or is created a Biſhop, pending the Writ. *Dy.* 1. *b. in Marg.* *Hob.* 319.

But the Incumbent ſhall not only counterplead the King's Title, but ſhall alſo make Title to himſelf. *Hob.* 319. *Vide infra.*

And muſt ſhew himſelf Poſſeſſor. *R. Dy.* 293. *a.*

So by the *St.* 25 *Ed.* 3. 7. An Archbiſhop, or Biſhop, who collates by *Lapſe*, may make Title to the Patronage in a *Quare Impedit* brought by the King. *Hob.* 318.

So in a *Quare Impedit* by a common Perſon, who is not the rightful Patron, where the Biſhop preſents by *Lapſe*. *Hob.* 319.

But an Ordinary, who has not collated by *Lapſe*, cannot plead to the Right, ſince the *St.* 25 *Ed.* 3. any more than by the Common Law. *R. Hob.* 319. *Jon.* 5.

In *Quare Impedit* the Defendant is Actor, and may have a Writ to the Biſhop, if Judgment be for him, as well as the Plaintiff. *Vau.* 7.

And when the Defendant is Actor, and requires a Writ to the Biſhop, he muſt make a Title in himſelf, as well as the Plaintiff. *Ibid.*

And therefore he muſt alledge a Title to the Advowſon. *Vau.* 8. *Vide ante,* (3 I. 4.)

A Preſentation in himſelf, or another under whom he claims. *Vau.* 7. *Vide ante,* (3 I. 5.)

But where the Defendant has preſented, and his Preſentee is inſtituted and inducted, ſo that a Writ to the Biſhop for him is not neceſſary, he is not then regarded as an Actor. *Vau.* 7.

And therefore, if the Defendant controverts the Title, alledged by the Plaintiff, and does not ſtand upon his own Title, he may alledge a Title *pro Formâ*, and that his Clerk is inducted, without alledging a Preſentment in himſelf. *R. Vau.* 8.

So, if the Defendant demurs to the Plaintiff's Count, which is adjudged inſufficient, the Defendant ſhall have a Writ to the Biſhop, without making Title. *Dy.* 24. *b.*

So, in a *Quare Impedit* by the King, if the Defendant ſhews a Leaſe by the King's Anceſtor to *A.* and that during his Poſſeſſion *B.* preſented him, it is ſufficient, without ſhewing a Title in *B.* for he ſhews the Eſtate out of the King. *R.* 1 *Leo.* 45.

If the Defendant traverſes the Title alledged by the Plaintiff in his Count, the Traverſe muſt be of a Matter not only inconſiſtent with the Defendant's Title, but which alſo deſtroys the Plaintiff's Title, if it be found againſt him. *Vau.* 8.

As, if the Plaintiff alledges Seiſin of an Advowſon in Groſs and a Preſentation in himſelf, and the Defendant alledges a Seiſin of it as Appendant, he ought not to traverſe the Seiſin in Groſs, tho' it be inconſiſtent with the Defendant's Title; for if he preſented, tho' by Uſurpation, he has a Title, whether the Advowſon be Appendant or in Groſs. *R. Vau.* 9, 10. *Semb. Dy.* 78. *b.* 1 *Leo.* 154.

So he ought not to traverſe the Seiſin of the Advowſon. *Vau.* 12.

So, if he alledges Seiſin of the Advowſon as appendant, and a Preſentment, without ſaying that he preſented to it as appendant, he cannot traverſe the Appendancy. *R.* 1 *And.* 270. *Vau.* 15.

But, if the Plaintiff alledges Seiſin of the Advowſon as appendant, and a Preſentment to it as appendant, the Defendant may traverſe the Appendancy, or the Preſentment, for one or the other deſtroys the Plaintiff's Title, if it be found againſt him. *R. Vau.* 15. *R.* 1 *Leo.* 154.

So, if the Plaintiff alledges Seiſin of it, as appendant, and a Preſentment by the King by *Lapſe*, and the Defendant ſays, that the King was ſeiſed in Groſs, and preſented, he ought to traverſe the Appendancy. *Vau.* 13.

So, if the Defendant alledges Appendancy to other Lands, *&c.* *Vau.* 12.

So, if the Plaintiff alledges Seiſin in Groſs, and the Defendant claims as appendant, he ought to traverſe, that it is in Groſs. *Keil.* 51. *b.* *Semb. Keil.* 91. *a.* Tho' *there R.* That he may traverſe the Seiſin in Groſs, or the Preſentment.

If the Plaintiff alledges a Vacancy by the Death, Reſignation, or Deprivation of the former Incumbent, and the Defendant alledges an Avoidance by other Means, as, by a Simoniacal Contract, *&c.* he muſt traverſe the Avoidance by Death, *&c.* and not the Seiſin, Appendancy, *&c.* *Vau.* 16.

So, if the Plaintiff alledges a Vacancy by Death, and the Defendant alledges an Avoidance by Plurality, by which it belongs to the King by *Lapſe*, he ought to traverſe the Avoidance by Death. *Semb. Sav.* 78.

[On *Quare Impedit* by the King, for the next Turn of a Living void by Promotion; if Defendant confeſſes and avoids by pleading that the Crown preſented *A.* who is ſince dead, and himſelf now preſented, and Parſon *imparſonee*, he need not traverſe that the Church is vacant by the Promotion; if he does, it may be paſſed over, and Iſſue taken on the Avoidance. *Rex* v. *Archbiſhop of Ardmagh*, *T.* 3 *G.* 2. *Str.* 837.]

So, if the Defendant by his Plea ſhews a Title ſubſequent to the Plaintiff's Title, he need not traverſe it; for he confeſſes and avoids, *Vide ante,* (G. 1, 3.)

As,

As, if the Defendant alledges a Seiſin and Preſentment ſubſequent to the Preſentment alledged by the Plaintiff. *Vau.* 16.

If the Defendant alledges a Seiſin and Preſentment by the King, and the Plaintiff by his Replication alledges a Grant by the King to him, and a Preſentment by the Grantee, and upon his Death a Preſentment of the King by Lapſe, *&c.* This avoids the Preſentment by the King. *R. Jon.* 12.

[Subſcribing the Articles need not be averred in the Plea, nor in the Declaration. *Rex* v. *Archbiſhop of Ardmagh, T.* 3 *G.* 2. *Str.* 837.]

(3 I. 10.) Replication.

If the Plaintiff replies to the Defendant's Title, it is not ſufficient to deſtroy the Defendant's Title, without maintaining his own Title. *Vau.* 60.

Tho' the King be Plaintiff. *R. Vau.* 61.

But where the King's Title appears, (being found by Office or other Matter of Record) there the King may relinquiſh his Title, being eſtabliſhed by Record, and traverſe the Defendant's Title. *Vau.* 62.

If a Biſhop pleads, *Nothing but as Ordinary*, and dies, another Defendant may ſuggeſt his Death on the Roll, and pray that the Plaintiff may reply, and if he be nonſuited, it ſhall be peremptory. *R. Sal.* 559.

(3 I. 11.) Judgment in *Quare Impedit.*

In a *Quare Impedit* by the King, the Attorney-General may enter a *Nolle proſequi*, upon which there ſhall be Judgment, *quod* Defendants *eant ſine Die. Townſ. Jud.* 177, 8.

So, if there be Judgment againſt the King upon a Verdict or Demurrer. *Townſ. Jud.* 179.

If the Plaintiff is nonſuited, it is peremptory, and the Defendant ſhall have a Writ to the Biſhop. 1 *Brownl.* 161.

And if any Defendant bars the Plaintiff, his Action fails. 1 *Brownl.* 161, 162.

In *Quare Impedit* by the King or a common Perſon, if the Ordinary claims nothing but as Ordinary, there ſhall be Judgment againſt him with a *Ceſſat Executio quouſq; &c. Hob.* 198. *Vide ante*, (3 I. 9.)

If the Plaintiff does not accept his Diſclaimer, but maintains him to be a Diſturber, and he is found ſo, there ſhall be Judgment, and the Ordinary will be ſubject to anſwer Damages. *Hob.* 320. *Vide Damages*, (A. 3.)

If it is found againſt the Plaintiff, he ſhall be barred, and cannot have Judgment, or a Writ to the Biſhop. *Hob.* 320.

Tho' the Biſhop collated by *Lapſe*, *pendente Lite*, and ſo the Clerk collated ſhall not be removed. *Ibid.*

If the Patron and Incumbent confeſs the Action, or *Nil dicunt*, *&c.* there ſhall be Judgment for the Plaintiff, and a Writ to the Biſhop.

So, if Judgment be given againſt them upon a Demurrer.

If a Verdict in *Quare Impedit* be found for the Plaintiff, the Jury ought to enquire *ex Officio* of four Points, *viz.* Whether the Church be full. 2d. Of whoſe Preſentation. 3d. The Value of the Church. 4. How long vacant. *Keil.* 57. *b.*

And this is ſince the *St. W.* 2. 5. not by the Common Law. *Hob.* 318.

So there ſhall be a Writ of Inquiry, upon a Judgment by Default, or upon Demurrer, to enquire of thoſe four Points. *Dy.* 241. *b.*

Or after a Verdict, if the Jury omit it. *Townſ. Jud.* 191. *Dy.* 135. *a.*

And till this is executed, the Writ to the Biſhop ſtays. 1 *Bro. Ent.* 327.

But an Inquiſition, which finds the Church full of the Preſentation of a Stranger does not hurt. *Dy.* 77. *a.*

After a Verdict before Juſtices of Aſſiſe, by the *St. W.* 2. 30. *St.* 12 *Ed.* 2. 4. 14 *Ed.* 3. 16. the Juſtices may give Judgment immediately, and award a Writ to the Biſhop. *Dy.* 76. *b.* 2 *Inſt.* 424. *Dy.* 135. *a.* 260. *a. Hob.* 327.

Or

Or it may be given in *C. B.* 2 *Inſt.* 424. *Kel.* 57. *b.* *Dy.* 135. *a.*

And Error may be to the Judges of Aſſiſe, or to the Judges of *C. B.* *Dy.* 77. *a.*

If Judgment be given for the Plaintiff to recover his Preſentation, Execution ſhall be by a Writ to the Biſhop. *Vide Poſt*, (3 I. 12.)

If it be given for Damages, as it may by the *St. W.* 2. 5. Execution ſhall be by *Fi. fa.* or *Elegit.* 1 *Brownl.* 158.

But not by *Capias ad ſatisfaciend'.* *Ibid.*

If in a *Quare Impedit* between common Perſons a Title appears for the King, Judgment ſhall be given for the King, and a Writ to the Biſhop for the King's Clerk. *F. N. B.* 38. *E.* *Bend. pl.* 301. *R.* 1 *And.* 53.

So, in a *Quare Impedit* by the King, if the Iſſue be whether the King is ſeiſed of the Advowſon of *B.* and it is found, that he is ſeiſed of two Turns, and the Biſhop of the other Turn, and it appears to be the King's Turn, there ſhall be Judgment for him. *R.* 1 *Brownl.* 164. *Hob.* 118.

But if a Title for the King appears by the Defendant's Plea, there ſhall not be a Writ for the King's Clerk, without the Plaintiff's Confeſſion of his Title upon Record. *R. Hob.* 126. 2 *Cro.* 216.

Judgment by the Common Law was only for Recovery of the Preſentation, and a Writ to the Biſhop. 5 *Co.* 58. *b.*

By the *St. W.* 2. 5. The Plaintiff ſhall alſo recover Damages. 5 *Co.* 58. *b.*

But ſince the Statute, the Plaintiff may wave the Benefit of it, and take his Judgment at Common Law. *R.* 5 *Co.* 59. *a.*

When Damages or Coſts are allowed in *Quare Impedit*, *Vide Coſts*, (A. 2.)—*Damages*, (A. 2, 3.)

(3 I. 12.) Writ to the Biſhop.

After Judgment in *Quare Impedit*, the Plaintiff or Defendant, for whom the Judgment is given, ſhall have a Writ to the Biſhop to admit his Clerk, if he be not before inſtituted and inducted. *F. N. B.* 38. *B.* *Vide Ante*, (3 I. 9.)

And it ſhall be directed to the ſame Biſhop, who is Defendant. *F. N. B.* 38. 1 *Brownl.* 159.

Or, if he be the Patron, to the Metropolitan. *Dy.* 353. *b.* For it ſhall be to one or the other at the Plaintiff's Election. *Vide Certificate*, (I. 3.)

Or, if the Biſhop is abſent, or out of the Realm, to the Guardian of the Spiritualties. *Dy.* 350. *a.* 77. *a.*

If the Archbiſhop of *Canterbury* is Plaintiff, it ſhall be to the Archbiſhop of *York*. *Per Holt*, *Sho.* 329.

It may be to the Archbiſhop upon a Judgment in *Quare Impedit* in *Wales*; for it is within his Province. *R. Jon.* 332.

But the Defendant ſhall not have a Writ to the Biſhop, if the *Quare Impedit* abates for Form, or falſe *Latin*. *F. N. B.* 38. *H.*

So, if the Patron makes Default to the *Diſtringas*, he ſhall not have it, tho' it abates by the Incumbent's Plea. *F. N. B.* 38. *H.* *Semb. cont.* *Bend. pl.* 136, 207.

So, if a *Quare Impedit* abates for Form, *Miſnomer*, or Inſufficiency. *F. N. B.* 38. *M.* *R.* 7 *Co.* 27. *b.*

If the Sheriff returns *quod Quer' non invenit Pleg'*, upon which the Plaintiff finds Pledges in *C. B.* and has another Writ, and the Sheriff returns *Tardè*, if the Defendant appears, and the Plaintiff makes Default, the Defendant ſhall not have a Writ to the Biſhop, becauſe the *Quare Impedit* was never ſerved upon him. *F. N. B.* 38. *O.*

So the Defendant ſhall not have a Writ to the Biſhop, where he claims as Parſon *imparſonee*. *F. N. B.* 38. *L.*

Where there is another *Quare Impedit* depending for the ſame Church againſt him. *F. N. B.* 38. *R.*

So, if the Plaintiff is nonſuited, the Defendant ſhall not have a Writ to the Biſhop before Title made. *F. N. B.* 38 *K.* *Raſt. in Qu. Imp. Eveſq.* 2.

Otherwiſe where the Defendant has Judgment upon a Demurrer to the Declaration. *Dy.* 24. *b.*

So, the Plaintiff ſhall not have a Writ to the Biſhop before he has counted, tho' All make Default but the Biſhop. *F. N. B.* 38. *I.*

So the King ſhall not have a Writ to the Biſhop upon Default, till Title made. *Sal.* 559.

But the Plaintiff ſhall have a Writ to the Biſhop, without making Title, if the Defendant makes Default upon the *Diſtringas*. *F. N. B.* 38. *N. Semb. cont.* 1 *Brownl.* 158. *Vide Ante,* (3 I. 1.)

If a Writ is awarded to the Biſhop, he ſhall admit the Clerk of the Party, and remove All, who were admitted *pendente Lite*. *Hob.* 320. *R.* 3 *Leo.* 138. *R. Sav.* 89. *Hut.* 24.

Tho' admitted upon the Preſentation of a Stranger to the Writ. *Hob.* 320.

Or upon a Preſentment by the King. *Cont. Dy.* 260. *a.* 364. *a. But it is there ſaid that this Opinion was not Law. R. by* 3 *J.* That the Preſentee of the King or a Stranger *pendente Lite* ſhall not be removed without a *Scire facias.* 2 *Cro.* 93.

If the Plaintiff is outlawed after Judgment, and the King preſents by reaſon of the Outlawry, and then the Outlawry is reverſed, the Plaintiff ſhall have Execution upon the firſt Judgment, and by Writ to the Biſhop ſhall remove the King's Preſentee. *R. by* 3 *J. Periam cont. Sav.* 89.

If the Ordinary does Nothing upon the firſt Writ, there ſhall be an *Alias* directed to the Biſhop, which may be returnable, and upon this an Attachment. *Reg.* 42. *a.* 80. *F. N. B.* 38. *C. Dy.* 254. *b.* 350. *a.*

And the Ordinary returns the Writ *Quod admiſit. Townſ. Jud.* 192.

Or he may return *Quod non eſt idonea Perſona,* ſhewing how. *Semb. Dy.* 254. *b. Br. Jud.* 9.

That the Clerk did not requeſt to be admitted. *R. Keil.* 71. *b.*

But, if the Incumbent, of whom the Church is full, be not a Party to the Writ, he ſhall never be removed. *Co. Lit.* 344. *b.*

If the Biſhop refuſes Admittance upon a Writ to him, an *Alias, Pluries* and Attachment lies againſt him. *F. N. B.* 38. *C.* 47. *C.*

And there was a Fine of 10 *l.* for a bad Return upon the firſt Writ, and an *Alias* under the Penalty of 100 *l.* 3 *Leo.* 139.

Or the Party may have a *Quare non admiſit,* and recover his Damages. *F. N. B.* 47. *C.* 21 *H.* 7. 8. *b.*

A *Quare non admiſit* ſhall be ſued in the County where the Refuſal was. *F. N. B.* 47. *F.*

And out of *C. B.* in Term, where the Recovery was. *F. N. B.* 47. *C.*

So, it may be ſued by the King in *B. R.* tho' the Recovery was in *C. B. F. N. B.* 47. *D.*

Or by a common Perſon, if the Record was removed there by Error. *F. N. B.* 47. *E.*

So, it may be ſued out of *Chancery,* in Term-time, or Vacation. *F. N. B.* 47. *C.*

And it lies, if the Biſhop refuſes, tho' he afterwards admits the Clerk. *F. N. B.* 47. *L.*

But the Plaintiff ſhall not have his Clerk admitted upon a *Quare non admiſit*; for it is only to recover Damages. *F. N. B.* 47. *G.*

And the Biſhop may plead that the Church is full of the Preſentment of ſuch an one, not Party to the Recovery. *F. N. B.* 47. *K.*

(3 K) Pleading in Replevin.

(3 K. 1.) Proceſs.

(3 K. 1.) By Writ of Replevin.

IF a Man tortiouſly takes the Perſon, or Goods and Chattels of another, and detains them, a Replevin lies, upon which the Sheriff ſhall be commanded upon Pledges to make Deliverance of the ſame Perſon or Goods.

By

By the Common Law, the Perſon of a Man was replevied by a Writ *de Hom. Replegiando*. *Reg.* 77. *b.*

So, by the Common Law, there was a Replevin of Cattle or Goods by Writ to the Sheriff. *Reg.* 81. *a.* *F. N. B.* 68. *D.*

And Replevin ſhould be brought by him who has the Property, abſolute, or qualified, in the Goods. *Vide Replevin*, (B.)

And againſt him, who took, or commanded the Taking, or both. 2 *Rol.* 431. *l.* 5.

If the Sheriff himſelf took them, it ſhall be againſt him by his proper Name. *Reg.* 81. *b.*

If the Writ of Replevin be for divers Sorts of Cattle, it ſhall be *quare Averia ſua, &c.* *F. N. B.* 68. *D.*

If only for one Beaſt, it ſhall be *quare Equum ſuum*, or *Bovem ſuum, &c.* *F. N. B.* 68. *D.*

If a live Beaſt and a dead Chattel are in the ſame Writ, the Beaſt ſhall be named firſt. *Reg.* 81. *b.*

For what Things, and when a Replevin lies. *Vide Replevin*, (A. &c.)

A Writ of Replevin is in the Nature of a *Juſticies*. 2 *Inſt.* 140.

If the Sheriff does not return, or does nothing upon the Writ of *Hom. Repleg.* or the Writ of Replevin, the Plaintiff ſhall have an *Alias Hom. Repleg'*. *F. N. B.* 68. *E.*

Or an *Alias* Replevin. *Ibid.*

And the *Alias* uſually has this Clauſe, *vel Cauſam nobis ſignifices*. *Ibid.*

But ſuch Clauſe may be omitted in the *Alias*. *Ibid.*

If the Sheriff does nothing upon the *Alias*, the Plaintiff may have a *Pluries Hom. Repleg.* which recites the *Alias*, and Contempt upon it, and commands that the Sheriff make Replevin, or that he himſelf be preſent to anſwer to the Contempt. 2 *H.* 7. 5. *b.*

So he may have a *Pluries* Replevin. *F. N. B.* 68. *E.*

And, if he thinks fit, he may have a Writ of Replevin, *Alias*, and *Pluries*, all at the ſame Time. *Ibid.*

If the Sheriff makes Replevin upon the *Pluries*, he does not return the Writ; but if he does not make Replevin, he ought to return the Cauſe. 2 *H.* 7. 5. *b.*

If upon the *Alias* the Sheriff returns, *Property claimed*, a Writ *de Proprietate probanda* iſſues. *Dy.* 173. *a.* *Vide Poſt*, (3 K. 11.)

If the Sheriff does nothing upon the Replevin, *Alias*, and *Pluries*, an Attachment will lie againſt him, directed to the Coroners, commanding them, that they attach the Sheriff to anſwer for his Contempt, and in the *Interim* make Replevin. *Reg.* 81.

So, if nothing be done upon the *Hom. Repleg. Alias*, and *Pluries*. *Reg.* 78. *a.*

To the Replevin, *Alias*, or *Pluries*, the Sheriff may return, *No Cattle taken*. *Kit.* 263. *a.* *R. cont. Sal.* 581.

Or, *that the Cattle are eſloigned*. *Kit.* 262. *Sal.* 581.

Or, *dead*. 32 *H.* 6. 27. *b.*

Or, *that no one ſhewed him the Cattle*. *Sal.* 581.

And thereupon the Plaintiff may have a *Capias in Withernam*, ſo many of the Defendant's Cattle. *Reg.* 82. *b.* *F. N. B.* 68. *G.* *Dy.* 189. *a.*

So, if upon a *Hom. Repleg.* it be returned, *that he is eſloigned*, there ſhall be a *Capias in Withernam* the Defendant. *Reg.* 79. *F. N. B.* 68. *C.*

[If *A.* brings *Homine replegiando* for his Wife, then *Alias*, then *Pluries*, to which Defendant appears, and then *Capias* in *Withernam* iſſues; it is irregular, and Proceſs thereon ſhall be ſtaid. *Saunders* v. *Forteſcue*, *H.* 23 *G.* 2. 1 *Wilſ.* 256.]

If the Defendant appears at the Return, he ſhall be committed, without a *Capias in Withernam*, till he produces the Perſon, and ſhall not be admitted to plead. *R. Skin.* 61, 62.

[Defendant may be bailed on *Cap. in Withernam*, but Plaintiff muſt firſt declare, and Defendant plead *Non cepit*; and the Bail is for Defendant to appear, and

and if Judgment againſt him, to render his Body, and be in Cuſtody till he render the Perſon, &c. *Barnes* 59.]

[If after Defendant's Appearance, and before Declaration, the Wife dies, the Court will not on Motion ſtay Proceedings, but Plaintiff ſhall declare, and Defendant take what Advantage he can by Pleading. *Saunders* v. *Forteſcue*, *H.* 23 *G.* 2. 1 *Wilſ.* 256.]

Withernam lies upon a Replevin by Plaint. 9 *Ed.* 4. 48. *b.*

If a Bailiff, upon a Replevin by Plaint, returns, *that he could not have a View, to make Deliverance*, the Sheriff ſhall inquire by Inqueſt, and if it be found, that he could not have it, the Sheriff ſhall award a *Withernam*. 1 *Brownl.* 167.

And a *Capias in Withernam* lies againſt the Defendant, tho' a Peer. 11 *H.* 4. 15. *b.*

It is only *meſne* Proceſs, not an Execution. *Sal.* 582.

The *Capias in Withernam* recites the Return upon the Replevin, or *Hom. Repleg'*. *F. N. B.* 69. *B.*

If upon a *Capias in Withernam*, or *Hom' Repleg'*, the Sheriff returns *Non eſt invent'*, there ſhall be a *Capias in Withernam* for the Goods of the Defendant. *F. N. B.* 68. *C.* 11 *H.* 4. 15. *b.*

If, upon a *Capias in Withernam*, the Sheriff returns *Nulla Bona quæ capi poſſunt*, the Plaintiff ſhall have a *Capias* and Proceſs to Outlawry. *F. N. B.* 74. *D.*

If upon a *Capias in Withernam*, or *Hom' Repleg'*, or in Replevin, he returns *Cepi*, &c. the Perſon or Cattle taken, they are irrepleviſable. *R. Ray.* 475. 7 *H.* 4. 27.

But the Parties may appear upon the *Withernam*, and count, &c. *D. Dy.* 189. *a.* *R. Noy* 50. *Vide ante*, (B. 5.)

If upon the *Capias in Withernam* the Defendant pleads *Non cepit*, he may be bailed. *R. Sal.* 581. *Skin.* 337.

And he is not eſtopped by the Return of *Elongat'* to ſay, *quod non cepit*. *R. Sal.* 581. *Skin.* 61, 76, 337.

And if the Return of *Elongat'* be falſe, after Judgment againſt the Sheriff for the falſe Return, the Defendant ſhall be bailed. *Ray.* 475.

If on Replevin made by the Sheriff upon a Plaint in the County-Court, the Bailiff returns that the Cattle are eſloined, the Sheriff muſt inquire of it, and if it be ſo found, the Sheriff may award a *Withernam* in the County. *F. N. B.* 69. *C.* 74. *C.* 1 *Brownl.* 167.

And, if he refuſes to do it, there ſhall be a Writ out of *Chancery* directed to him to award a *Withernam*. *F. N. B.* 69. *C.*

And if he does not obey, there ſhall be an *Alias*, *Pluries*, and Attachment. *Ibid.*

So *Withernam* lies in *Second Deliverance*. 1 *Brownl.* 167.

If the Sheriff refuſes a *Withernam*, an Attachment lies againſt him, and a *Diſtringas* directed to the Coroners. 1 *Brownl.* 167.

If a *Nihil* be returned upon the *Withernam*, an *Alias* and *Pluries* go, and ſo *in infinitum*. 1 *Brownl.* 167.

After a *Withernam* awarded, if the Defendant pays all Damages to the Plaintiff, he ſhall have Reſtitution awarded. *R. Cro. El.* 162. 7 *H.* 4. 27. *Ow.* 46.

But it is no good Return for the Sheriff upon a Replevin *Quod mandav' Ballivo qui nul' dedit Reſponſ'*, or *No Deliverance made*; for by the *St. Weſt.* 1. 17. the Sheriff ought immediately to enter the Franchiſe and make Deliverance. *F. N. B.* 68. *F.*

That the Cattle are incloſed in a Park, Fortreſs, &c. 8 *H.* 4. 19. *a.*

(3 K. 2.) By Plaint.

By the *St. of Marl.* 52 *H.* 3. 21. *Si Averia capiantur, &c. Vicecomes, poſt Querimoniam ſibi factam, ea deliberare poſſit, ſi extra Libertates, &c. Et ſi infra, &c.*

And upon this Statute, after Plaint to the Sheriff, He by *Parol* or Precept, may by his Bailiff replevy them. 2 *Inſt.* 139. *F. N. B.* 69. *E.* *Per Lit.* 9 *Ed.* 4. 48. *b.*

And it is not neceſſary for him to ſtay till the County-Court before he makes Plaint, if the Plaint is afterwards entered there. 2 *Inſt.* 139. *Co. Lit.* 145. *b.* 9 *Ed.* 4. 48. *b.*

And the Sheriff ought upon Plaint to make Deliverance of the Cattle, tho' he himſelf took them. 2 *Inſt.* 139.

And the Plaint ſhall be, *quæ A. B.* (naming the Sheriff's proper Name) *cepit. Ibid.*

So he may make Deliverance, tho' the Goods or Cattle are above the Value of 40 *s. Ibid.*]

Tho' after the Taking they are conveyed into a Franchiſe. 2 *Inſt.* 140.

So, if they are taken in a Franchiſe, and upon a Precept the Bailiff of the Liberty refuſes, or neglects, to deliver them, the Sheriff may enter the Franchiſe and replevy. *Ibid.*

So he may upon a Writ of Replevin. *Ibid.*

And therefore, upon a Writ of Replevin, it is not a good Return, that the Bailiff of the Franchiſe *nullum dedit Reſponſum*, or the like Matter. *Reg.* 82. *F. N. B.* 68. *F.*

So the Sheriff may take ſuch Power for his Aſſiſtance as he pleaſes. 3 *H.* 7. 1.

By the *St. W.* 1. 17. If the Cattle are drove to a Caſtle, or Fortreſs, and there detained *contra Vad' et Pleg'*, after Demand the Sheriff ſhall make Deliverance. 2 *Inſt.* 192.

So, if they are drove into a Houſe, Park, or other Place fortified. 2 *Inſt.* 193.

And the Sheriff, or his Bailiff, may take the *Poſſe Comitatus* with him to make Replevin. *Ibid.*

And no Perſon, Eccleſiaſtical or Temporal, above the Age of fifteen and under ſeventy, is exempt, but muſt aſſiſt him. 2 *Inſt.* 194.

And therefore the Sheriff cannot return that the Cattle are eſloined into a Caſtle, &c. 2 *Inſt.* 194. 8 *H.* 4. 19. *a.*

But the Sheriff muſt not uſe Force, before a Demand of Deliverance. 2 *Inſt.* 193.

Nor can he break into the Houſe or Cloſe, if there is a Door or Gate open. 2 *Rol.* 552. *l.* 35.

Otherwiſe, if the Owner at the Door, &c. by Force hinders his Entry. 2 *Rol.* 565. *l.* 37.

(3 K 3.) By Cuſtom.

By Cuſtom in the County of *Northampton*, in the Abſence of the Sheriff's Bailiff the *Frankpledge* may make Replevin. 2 *Inſt.* 139.

By the Cuſtom of *London*, upon Security for Return of the Goods or the Value, the Sheriff ſends an Officer to appraiſe the Goods, if he can, and to deliver them to the Plaintiff. *Priv. Lon.* 170.

By Cuſtom a Replevin may be granted by the Hundred Court. *Dub. Sal.* 580.

But a Cuſtom, that Goods taken in *London* ſhall not be replevied by the King's Writ but only in *London*, is not Good. *Dy.* 245. *b.*

And therefore a Return of ſuch a Cuſtom was diſallowed. *Dy.* 246. *a.*

So a Cuſtom, that a Replevin may be granted in or out of Court, is not good; for it cannot be but in Court. *R. Sal.* 580.

(3 K. 4.) By Writ of ſecond Deliverance.

If the Plaintiff is nonſuited in Replevin, and his Cattle are afterwards taken again for the ſame Cauſe, he may have a Writ of ſecond Deliverance for his Cattle or Goods. *F. N. B.* 72. *D.*

Whether the Nonſuit is after, or before Avowry. *Ibid.*

And this Writ of ſecond Deliverance is a Judicial, and not an Original Writ, which was granted by the *St. W.* 2. 13 *Ed.* 1. 2. 2 *Inſt.* 341.

And this Writ iſſues out of the Record, upon which the Nonſuit was. 2 *Inſt.* 341.

And it muſt be conformable to the firſt Record. *Ibid.*

And therefore, if *Withernam* was awarded upon an Eſloinment of the Cattle after Nonſuit, the *Second Deliverance* ſhall not be of the Cattle taken by the *Withernam*, but of the firſt Cattle. 2 *Inſt.* 341.

So it muſt be teſted upon the ſame Day, upon which the *Retorn' habendo* was returnable upon the former Writ. 2 *Rol.* 97.

If the Plaintiff declares in *ſecond Deliverance*, the Defendant avows or makes Conuſance like as in Replevin. *Co. Ent.* 585.

And the *ſecond Deliverance* will be a *Superſedeas* to the *Retorn' habendo* upon the firſt Writ but not to the Inquiry of Damages; for theſe are given by the *St.* 21 *H.* 8. 19. for Coſts on the firſt Writ. *R.* 1 *Sal.* 95. 2 *Inſt.* 341.

[It is not taken away by 11 *G.* 2. and is not a *Superſedeas* to Writ of Inquiry of Damages on *Stat.* 17 *C.* 2. but after Writ of ſecond Deliverance, Defendant cannot proceed on *Retorn. habend.* *Barnes* 427.]

(3 K. 5.) Pledges, when found.

When a Bond, Vide Replevin, (D.)

By the *St. W.* 2. 13 *Ed.* 1. 2. The Sheriff, before Deliverance made of the Goods ought to take Pledges *ad proſequend' et pro Retorno habendo* (if Return be awarded) otherwiſe he ſhall anſwer the Price of the Goods. *Co. Lit.* 145. *b.* *Vide Ante,* (C. 16.)

And therefore, if upon a Writ of Replevin the Sheriff does not take Pledges, it will be Error. *R. Cro. Car.* 594.

And for his Default an Action upon the Caſe lies againſt the Sheriff. *R. Cro. Car.* 446.

Or againſt the Bailiff of the Franchiſe. 2 *Inſt.* 340.

And by the *St. W.* 2. 2. *Si Ballivus non habet, unde reddat, reſpondeat Superior.* *Ibid.*

So in *Homine replegiando* the Plaintiff ſhall find Pledges to proſecute with Effect, and to deliver the Perſon and his Goods. 5 *H.* 7. 3. *a.*

So, if the Sheriff takes inſufficient Pledges, he ſhall anſwer, as well as if he takes none. 2 *Inſt.* 340.

And therefore, if the Plaintiff is nonſuited, *&c.* and upon the *Retorno habendo* the Sheriff returns *elongata*, the Defendant ſhall have a Writ for the Cattle or Goods of the Pledges. 2 *Inſt.* 340.

And if upon the Writ againſt the Pledges, the Sheriff returns *Nichil*, there ſhall be a *Scire facias* againſt the Sheriff *quod reddat tot' Averia vel Catalla, &c.* 2 *Inſt.* 340. *Hut.* 77. *Off. Br.* 243.

Money depoſited in Lieu of Pledges is not ſufficient. *R. Cro. Car.* 446. *Jon.* 378.

Yet, one Pledge is good, if he is ſufficient, for it is at the Peril of the Sheriff, that he takes one or more Pledges. *Cro. Car.* 446.

And if the Writ is removed by *Recordari*, when the Sheriff had not taken Pledges, the Court may take Pledges, at any Time before Judgment, to avoid Error. *R. Mar.* 46. *Noy* 156.

But upon a Replevin by Plaint, Pledges are not neceſſary. *Cro. Car.* 594. for the Omiſſion is not Error. *R. Jon.* 439.

And if the Plaintiff is nonſuited, and the Sheriff returns *Elongata*, the Defendant ſhall not have a Writ for the Cattle of the Pledges, becauſe the Pledges do not appear to the Court. 2 *Inſt.* 340.

Yet, if they are found upon a Replevin by Plaint, a *Scire facias* lies againſt them, if Return is not made. *R.* 3 *Mod.* 57. *R. in C. B. Hil.* 3 *Geo. inter* —— *and Sheers.* *Vide Poſt,* (3 L. 17.)

(3 K. 6.) Replevin how removed.

(2 K. 6). By *Pone.*

If the Replevin be in the County by Writ, it may be removed by *Pone* into *C. B.* or *B. R.* *F. N. B.* 69. *M.*

And may be removed by the Plaintiff without Cauſe. *F. N. B.* 69. *M.*

And by the Defendant with Cauſe, but not without Cauſe. *F. N. B.* 70. *A.*

But

But the Replevin remains before the Sheriff, till removed by *Pone* or other Writ; for the *Replevin*, *Alias*, and *Pluries* are all *Vicontiel*. 2 *H.* 7. 5. *b.*

And therefore, if the Sheriff returns upon a *Pluries*, that he has made Deliverance, *B. R.* or *C. B.* cannot proceed upon it; for the Parties have no Day in Court by the Writ. 2 *H.* 7. 5. *b.*

If a Plaint is removed by *Pone* or *Recordari* into *B. R.* or *C. B.* the Plaintiff must declare there *de novo*, otherwise the Defendant shall sue out a Writ *de Returno habendo*. *F. N. B.* 71. *A.*

And Nothing shall be removed but the Plaint, tho' Issue is joined. *F. N. B.* 71. *A.*

And the Plaint may be removed, tho' the Plaintiff has discontinued there. *F. N. B.* 71. *A.*

(3 K. 7.) By *Certiorari.*

If the Replevin is in a Court of Record, that may hold Plea in Replevin, it may be removed by *Certiorari*. 3 *Mod.* 56.

And it cannot be removed out of a Court of Record except by *Certiorari*. *Per King C. J. Hil.* 3 *Geo.*

Tho' the Plaint was begun in the County, Hundred, *&c.* and afterward removed into a Court of Record. *Per King. Ibidem.*

After Removal the Plaintiff may declare *de novo* in *B. R.* or *C. B.* when the Plaint removed is transmitted there by *Mittimus*. *Bro. R.* 419.

(3 K. 8.) By *Recordari.* *As to a* Recordari *in Ancient Demesne Vide Ancient Demesne*, (G. 5.)

If the Replevin be in the County by Plaint, it may be removed into *C. B.* or *B. R.* by *Recordari*.. *F. N. B.* 70. *B.*

And this by the Plaintiff without Cause in the Writ, and by the Defendant with Cause. *F. N. B.* 70. *B.*

If the Sheriff returns the *Recordari*, *tardè*, the Party shall have an *Alias Recordari* *F. N. B.* 70. *B.*

And tho' the *Recordari* is tested before the Plaint entred, yet it is good. *F. N. B.* 71. *D.* *Bro. Recordare* 9. 1 *R.* 3, 4.

And false *Latin* in a *Recordari* does not vitiate it; for the Proceeding shall not be upon that, but upon the Plaint removed. *Dal.* 33.

But if the *Recordari* varies from the Plaint in the Names of the Parties, in the Things comprized. *&c.* the Plaint shall not be removed. *Dal.* 1, 33.

[The *Recordari* in Replevin is filed by Filazer, in other Actions by Prothonotary. *Barnes* 222.]

(3 K. 9) By *Accedas ad Curiam.*

If the Plaint be in the Court of another Lord, it may be removed into *B. R.* or *C. B.* by *Recordari* to the Sheriff, commanding him *quod accedas ad Curiam et in plena Curia ill' Recordari facias*, *&c.* *F. N. B.* 70 *B.*

As, if it be in a Hundred-Court, Wapentake, Tithing, *&c.* *F. N. B.* 70. *B.*

But it cannot be removed by an *Accedas ad Curiam*, which bears Date before the Plaint entred. *F. N. B.* 71. *D.*

Nor two Plaints by one *Recordari*. *Bro. Recordare* 11. 3 *H.* 7. 14. *a.*

Nor, if there is a material Variance between the Plaint and *Recordari* in the Name of the Court, or of the Parties. *Dal.* 33.

Nor shall it be removed out of a Court, which is not the King's Court, without Cause, neither by the Plaintiff nor by the Defendant. *Reg.* 85. *b.* 2 *Inst.* 339.

(3 K. 10.) Declaration in Replevin.

The Declaration in Replevin may be laid in the County where the Cattle or Goods were taken.

Or in the County, into which they are drove after the Taking. *F. N. B.* 69. *I.*

Or in both. *Cont. F. N. B.* 69. *I.*

The

The Declaration muſt be ſeveral by every one, who has ſeveral Property; for two Perſons, who have not a joint Intereſt, cannot join in Replevin. *Co. Lit.* 145. *b.* 3 *H.* 4. 16. *a.*

[Tho' Huſband and Wife jointly cannot maintain Replevin for taking the Goods of Huſband and Wife; yet if Defendant avows, it ſhall be intended that the taking was before the Coverture, and that they had then a joint Property. *Bourne* v. *Mattaire, P.* 8 *G.* 2. *Str.* 1015. *B. R. H.* 119.]

[And in that Caſe the Taking muſt be laid *ad Damn. ipſor. Ibid.*]

The Declaration in Replevin ought to mention the Place, in which the Taking was. 1 *Sid.* 9. *Barnes* 353.

[The *Taking* need not be laid in the Place where the Taking originally was, any other Place where the Cattle were in Defendant's Cuſtody is good. *Walton* v. *Kerſop, M.* 8 *G.* 3. 2 *Wilſ.* 354.]

And, if it is omitted, the Defendant may demur to the Declaration. *R. Cro. El.* 896. *Mo.* 678. *Hob.* 16. *D. Ray.* 34.

So, if there is a Blank for the Place. *R.* 35 *H.* 6. 40. *Hob.* 16.

Tho' the Name of the *Vill*, in which, is mentioned. *Cro. El.* 896. *Hob.* 16. *Mo.* 678.

So it ought to mention the *Vill*, in which the Place is. 1 *Sid.* 10.

So, if it mentions ſeveral Cattle taken in *A.* and *B.* for all the Cattle cannot be in both Places; but the Declaration muſt ſay how many are in one, and how many in the other Place. *R. Lit.* 37.

If it mentions a Place in *A.* and by Replication avers, that the ſame Place was in *B.* it will be a Departure. *R.* 1 *Sid.* 10.

If the Defendant avows in another Place, he muſt traverſe the Place in the Declaration. *R. upon a general Demurrer. Lut.* 1150. 9 *H.* 6. 39. *b.*

But the Omiſſion of the Place or *Vil* will be aided, if the Defendant does not demur for That. *R.* 1 *Sid.* 9, 20.

It muſt be conformable to the Original; and therefore, if the Original is *pro Averiis*, and the Declaration *pro Equo*, it is Error. *R. Cro. El.* 330.

Or, if the Original is in the *Detinet*, and the Declaration in the *Detinuit. Lut.* 1150. *Vide Ante*, (C. 13—(3 K. 1.)

It muſt mention the Cattle, or Goods, demanded with ſuch Certainty, that the Sheriff may make Deliverance of them.

[Fourteen Skimmers and Ladles, and three Pots and Covers, is ſufficient Certainty. *Bourne* v. *Mattaire, P.* 8 *G.* 2. *Str.* 1015. *B. R. H.* 119.]

And therefore, if it is for 100 Sheep, *Matrices et Vervices*, without ſaying how many of each Sort, it is bad. *R. Al.* 33. *Cant.* 218. *Vide Ante*, (C. 21.)

It muſt mention the Species of Cattle; as Sheep, Cows, *&c. Cart.* 218.

And the Value. *Per Ellis Cart.* 218.

If the Cattle, taken, are returned, the Declaration ſhall ſay *quare cepit. &c. et ea detinuit contra Vad' et Pleg' quoſque, &c.* 1 *Sand.* 347.

If they are not returned, it ſhall be, *Quare cepit, &c. et adhuc detinet contra Vad' et Pleg'* omitting *quouſque, &c. Raſt. Ent.* 560. *Co. Ent.* 610 *b.*

So, if only Part are returned, it ſhall ſay as to that *detinuit quouſque*, and for the Reſidue *adhuc detinet. Co. Ent.* 611. *b.* 613. *a.*

If the Declaration is in the *Detinet*, the Plaintiff ſhall recover the Value of the Cattle, Damages for the Taking, and Coſts. *F. N. B.* 69. *L.*

But he cannot recover the Cattle in *Specie*, but only the Value. *Dal.* 84.

If the Defendant appears upon the *Withernam*, the Plaintiff ſhall count upon the Writ of *Withernam. Dy.* 189. *a. Co. Ent.* 611. *b.* 613. *a.*

And thereon Pledges may be found for Delivery of the Cattle taken upon the *Withernam*, and alſo for the Cattle eſloined. *Co. Ent.* 611. *b.* 613. *a.*

And the Delivery ſhall be pledged before Avowry. *Per Dy. Dal.* 65.

If the Declaration is only for Part of the Cattle, the Defendant may avow for them and the others, and pray a Writ to the Sheriff immediately for the others, if Replevin was made of them. 1 *H.* 7. 12. *b.*

(3 K. 11.) Pleas in Replevin.

To Replevin the Defendant may plead in Abatement, or in Bar. (3 K. 11.)

In Abatement, *quod cepit in alio Comitatu.* *Th. Br.* 65. In Abatement.

Quod cepit in alio Loco, with a Traverſe of the Place in which, *&c. Aſht. Ent.* 474. *Mod Ca.* 102. *Vide Ante,* (3 K. 10.)

[*Cepit in alio Loco,* is a Plea in Bar, not in Abatement; no Affidavit is neceſſary, nor need it be pleaded in four Days after Declaration delivered. *Barnes* 353.]

To which the Plaintiff may join in Iſſue upon the Traverſe. *Aſht.* 475.

Or reply that the Place is known by one Name or the other.

Quod Locus in quo, &c. eſt in al' Vill'. *R.* 2 *H.* 6. 14. *a.*

So in Abatement the Defendant may plead Property in him, and not in the Plaintiff. *Co. Ent.* 314. *b.*

So, if there are ſeveral Cattle, the Defendant may plead that the Property of Part is in him.

So the Defendant may ſay that the Property is in a Stranger, and not in the Plaintiff. *Clift. Ent.* 654. 39 *H.* 6. 35. *a.* *R. Cro. El.* 475. 9 *H* 6. 39. *b.*

Or in the Plaintiff and a Stranger. *Co. Lit.* 145. *b.* *Adm.* 9 *H.* 6. 39. *b.*

If the Defendant claims Property before the Sheriff, he may return it upon the *Alias* Replevin, and thereon a Writ *de Proprietate probanda* iſſues; for the Property cannot be tried but by Writ. *Co. Lit.* 145. *b.* 1 *Brownl.* 167.

And this Writ iſſues out of *Chancery,* or out of *B. R.* or *C. B.* *Dy.* 173. *a.*

When it iſſues out of *Chancery,* it is an Original, and goes upon the Sheriff's Return to the *Alias* Replevin. *Dy.* 173. *a.*

When it iſſues out of *B. R.* or *C. B.* it is judicial, and granted to the Party upon the Sheriff's Return. *Dy.* 173. *a.*

And is only an Inqueſt of Office, upon which, if it is found for the Plaintiff, the Sheriff muſt make Deliverance to him. *Co. Lit.* 145. *b.* 7 *H.* 4. 45. *b.*

If it be found for the Defendant, the Sheriff does not proceed. *Co. Lit.* 145. *b.* *Dy.* 173. *a.*

Yet the Plaintiff may afterwards proceed in *C. B.* upon the Writ of Replevin. and the Property ſhall be tried there. *Co. Lit.* 145. *b.*

Tho' the Sheriff returns upon the Writ the Claim of Property. *Co. Lit.* 145. *b.* 7 *H.* 4. 46. *a.*

If a Man claims Property *in Curia Com',* it muſt be in Perſon, and not by Bailiff, or Servant. *Co. Lit.* 145. *b.*

But in *C. B.* he may claim by Bailiff. 1 *Leo.* 90.

So, in Abatement, the Defendant may plead Bailment to him by the Plaintiff, for which Detinue lies, and not Replevin.

In Bar, the Defendant may plead the general Iſſue, *Non cepit.* 1 *Bro. Ent.* 312. (3 K. 12.) In Bar.

So, if the Taking was in another Place, he may plead *Non cepit,* tho' he ſhall have no Return. *Per North.* 2 *Mod.* 199.

And if there are many Defendants, one may plead *Non cepit,* *Lut.* 1131.

Or *Non cepit* to Part.

If the Defendant appears after *Withernam* awarded, he may plead *Non cepit;* for he is not concluded by the Sheriff's Return of *Elongavit.* *R.* 4 *Mod.* 183. *Sal.* 581.

But he cannot plead *Non cepit infra ſex Annos;* for this does not anſwer to the Detainer. 1 *Sid.* 81, 2.

So the Defendant may plead *Property* in Bar, as well as in Abatement. 2 *Rol.* 64. *R.* 2 *Lev.* 92. 2 *H.* 6. 14. *a. Adm.* 1 *Leo.* 42. *R.* 3 *Keb.* 219, 232. *R. Sho.* 401. *R. Mod. Ca.* 81. 1 *Sal.* 5, 94.

And tho' he pleads *Property* to all the Cattle in the Count, yet upon Evidence he may prove a leſs Number. 1 *Leo.* 43.

So he may claim Property, tho' the Sheriff returns *Elongata*. *Sal.* 581.

So the Defendant may make Conuſance, for that the Property is in another. *R.* 1 *Lev.* 90.

So he may plead *Property in a Stranger* in Bar. *R.* 1 *Sal.* 5.

So, if he pleads *Property*, and traverſes the Property of the Plaintiff, Iſſue ought to be joined thereon, for a Traverſe of Property in the Defendant is not material. *R. Skin.* 65. *Dub. but held well after Verdict for the Plaintiff. Winch.* 26.

So the Defendant may plead a Releaſe from the Plaintiff.

A Releaſe, after the laſt Continuance. *Lut.* 1142.

So the Plaintiff in Bar of the Avowry may plead a Releaſe from the Defendants, or one of them. *Lut.* 1143.

Or a Releaſe from him, in whoſe Right the Defendant avows, or makes Conuſance. *Lut.* 1143.

So the Defendant may plead a Plea in Juſtification, without making Avowry, or Conuſance. *R.* 3 *Lev.* 205. *Lev. Ent.* 152.

But then he cannot have a Return of the Thing taken. 3 *Lev.* 205. 1 *Rol.* 319. *l.* 20.

And, if by Matter *ex poſt Facto* he cannot have the Thing taken, he muſt juſtify. 1 *Rol.* 314. *l.* 35.

Or, if he had no Intereſt at the Time of the Diſtreſs. 1 *Rol,* 320. *l.* 5. 318. *l.* 45. 2 *Cro.* 436.

(3 K. 13.) Avowry.

3 K. 13.) When neceſſary.

But if the Defendant had lawful Cauſe for the Taking, the moſt proper and uſual Courſe is to make Avowry or Conuſance, which is in the Nature of a Bar. *Mod. Ca.* 102.

An Avowry imports a Juſtification of the Taking in his own Right.

Or in Right of his Wife. 2 *Sand.* 195.

And in all Caſes, where the Defendant expects a Return of the Cattle or Goods taken, he muſt make an Avowry or Conuſance *pro Retorno habendo. Mod. Ca.* 103.

And therefore, if the Defendant pleads a Taking in another Place, he muſt make an Avowry *pro Retorno habendo*; for the Plaintiff, having alledged the Property of the Cattle in himſelf, ſhall not loſe them without Cauſe. 39 *H.* 6. 35. 1 *Sal* 93, 94.

[When Defendant avows at a different Place to have a Return, he muſt traverſe the Place in the Count; but when he does not inſiſt on a Return, he may plead *Non cepit*, and prove the taking at another Place. *Johnſon* v. *Wollyer*, *H.* 8 *G. Str.* 507.]

So, if he demurs for Want of a Place alledged. *R.* 35 *H.* 6. 40.

So, if he pleads Property in a Stranger. *R.* 2 *Rol.* 64. *Cont.* 1 *Sal.* 94.

So in all Caſes where he pleads in Abatement Matter collateral to the Action. 1 *Sal.* 94.

And the Title of the Avowry or Conuſance to have a Return cannot be traverſed. *R.* 1 *Sal.* 93, 94. *R.* 1 *Vent.* 127. *Carth.* 139.

But, if the Defendant pleads Property in himſelf, as he thereby directly falſifies the ſuppoſed Property in the Plaintiff, he may have a Return without Avowry. *Semb.* 39 *H.* 6. 35. *R.* 2 *Cro.* 519. 2 *Rol.* 65. *R.* 2 *Lev.* 92. *D. Mod. Ca.* 103.

So, if he pleads Property in a Stranger in Bar. *R.* 2 *Lev.* 92. *Dub. Sho.* 401. *D. Mod. Ca.* 103. 1 *Sal.* 94.

[Defendant

[Defendant may have Leave to withdraw his Avowry, and avow Property in a Stranger. *Barnes* 348.]

So, if the Plaintiff is nonſuited before Declaration, whereby Avowry is prevented, the Defendant ſhall make a Suggeſtion what Cattle, *&c.* were taken, and have a Writ *pro Retorno*, if the Sheriff *conſtare poterit Allegationem fore Veram.* *R.* 2 *Cro.* 519. *Ray.* 33. 2 *Rol.* 65.

So, if the Plaintiff declares for a leſs Number of Cattle or Goods, he ſhall make ſuch Suggeſtion for the Cattle, *&c.* omitted. *Ray.* 34.

So, if the Plaint is removed by *Recordari*, and the Plaintiff does not declare in *C. B.* *Ray.* 34.

If a Man, who takes a Diſtreſs, has no Intereſt, he cannot avow in his own Name: As, if the Superviſor of a Common diſtrains according to Cuſtom upon a Surcharge of the Common, he cannot avow in his own Name. 1 *Rol.* 318. *l.* 45.

But he may avow, tho' his Intereſt is determined after the Diſtreſs before the Replevin. 1 *Rol.* 319. *l.* 20.

[If Plaintiff dies after Declaration, and before Avowry, there can no Writ *de Returno habendo*, but Defendant may diſtrain again. *Cutfield* v. *Corney*, *M.* 32 *G.* 2. 2 *Wilſ.* 83.

Conuſance imports a Juſtification of the Taking in another Right. (3 K. 14)

And therefore one Defendant may avow, and the other make Conuſance in his Right. Conuſance.

And if one avows and the others make Conuſance, without ſaying as Bailiffs of the other, and entire Damages are given, it will be Error. *R. Yel.* 108.

If the Defendant makes Conuſance as Bailiff or Servant, he need not ſhew his Authority. 4 *Mod.* 378.

If he makes it as Bailiff to the King, a Patent need not be alledged. *Bro. Bailiff* 1.

Or, as Bailiff to a Corporation, he need not alledge a Deed. *R.* 3 *Lev.* 107.

Nor ſay *per eorum Præceptum.* 3 *Lev.* 107.

Or ſhew how incorporated. 3 *Lev.* 107.

And it is not traverſable, generally, whether he was Bailiff or not. *R. Cro. El.* 14. It is not traverſable, where he juſtifies in Treſpaſs or Replevin, as Bailiff, in a Cloſe which is the Freehold of a Stranger. 1 *Sal.* 107.

But where he took contrary to the Will of his Maſter, upon ſuch Inducement it may be traverſed. *R.* 3 *Lev.* 20.

So, it may be traverſed, that he took as Bailiff to another, and not to *A.* *R.* 1 *Leo.* 50. *R.* 2 *Leo.* 216, 196.

That he took of his own Wrong, *abſque hoc* that he took as Bailiff, for this is material where the Taking is of Cattle. *R.* 1 *Sal.* 107.

If one Defendant pleads *Non cepit*, the other may make Conuſance in his Right, for he ſhall not loſe his Advantage by the other's Plea. 1 *Rol.* 320. *l.* 25.

If the Defendant ſays *bene advocat*, *&c*, for *bene cognovit*, it is Form only. 2 *Cro.* 372.

If he ſays *bene cognovit Captionem in prædicto Loco*, without ſaying *Tempore quo*, *&c.* it will be well. *R.* 2 *Mod.* 4.

If he does not deſcribe how many Acres the *Locus in quo* contains in his Avowry, it will be well. *R. Lut.* 1232.

Avowry or Conuſance ought to make a good Title *in Omnibus*, for it is founded upon the Right. *Carth.* 74.

For it is in the Nature of a Count, and muſt contain ſufficient Matter to have a Return. 7 *Co.* 25. *a.*

And therefore, if he avows for Homage, he muſt make a Title to Homage.

If the Replevin is, *Bona et Averia cepit*, and the Defendant *advocat*, or *cognovit Captionem Bonorum et Averiorum*, but his Juſtification goes only to the Cattle, without ſpeaking of the Goods, it will be bad. *R.* 5 *Mod.* 77.

So, if the Replevin is *Bona et Catalla et Averia cepit*, and he makes Avowry or Conuſance of the Cattle only, it will be bad. *R.* 4 *Mod.* 402.

If

If the Avowry or Conuſance is bad, the Defendant ſhall have no Return, tho' the Replevin is alſo bad, and the Declaration therein quaſhed for Defect. *R. Sho.* 99.

But two Defendants cannot make ſeveral Avowries for the ſame Thing, each in his own Right, for each cannot have Judgment ſeverally for the ſame Thing. 5 *Co.* 19. *a.*

So the Avowry need not be for the ſame Thing, for which the Taking was; for if a Man diſtrains for one Cauſe, he may afterwards avow for any other Cauſe, for which the Taking was juſtifiable. 3 *Co.* 26. *a.* 2 *Leo.* 196.

So an Avowry for Rent, if it appears that Part is not Arrear, will be good for ſo much as is due, upon Demurrer. 1 *Sand.* 287. *Vide Ante*, (C. 32.)

Otherwiſe, if he avows for an Intire Rent, and it appears that he has Title only to two Parts. 1 *Sand.* 286. *R. Mo.* 281.

Or, if he avows for 30 *l.* Part of the Rent for half a Year, without ſhewing that the Reſidue was ſatisfied *R.* 4 *Mod.* 402.

Or, if he avows *pro Cert. Letæ*, and for a Fine for not preſenting, where it appears that the Fine was exceſſive. 11 *Co.* 45.

So Avowry for Rent-arrear *Tempore Captionis* is ſufficient, without ſaying *adhuc aretro exiſten'*. *R. Dal.* 72.

So, if the Avowry is for Rent due at *M.* and the Diſtreſs is alledged before *M.* and Judgment for the Avowant, it may be amended after Error for it. *R. Sal.* 580.

But, if it is not amended, it will be Error, where he takes Judgment for the whole Rent till *M.* *R. Sal.* 580.

If the Avowry or Conuſance is by Attorny, when he was an Infant, the Plaintiff may plead it in Abatement. *R.* 1 *Sal.* 93.

(3 K 15.) Avowry for Rent and Services.

The moſt uſual Avowry is upon Diſtreſs made for Rent or Services.

The Defendant in ſuch Avowry muſt alledge in certain what Lands are held of him, or of his Lord, and by what Tenure. 3 *Lev.* 142.

For Rent. *Win. Ent.* 823, or 934, 937, 940. Edit. 1680.

For Homage. *Win.* 829. (or 973. Edit. 1680.)

Fealty. (*Vide Win.* 965.)

Suit of Court. (*Vide Win.* 986.)

Heriot Service. *Vide Poſt*, (3 K. 28.)

And if he alledges Tenure by Services of different Natures or Qualities, tho' he holds by ſome of the Services, the Tenure may be traverſed. 9 *Co.* 33. *a.* *R. Cro. El.* 799.

If he alledges Tenure by Homage, he muſt intitle himſelf to it. *R. Win. Ent.* 859. (or 973.)

But ſince the *St.* 21 *H.* 8. 19. he need not alledge any certain Tenant. 1 *Leo.* 301.

So, he muſt alledge Seiſin of the Services, where the Commencement of them does not appear by Deed, *&c.* *Vide Poſt*, (3 K. 17, 18.)

And he muſt alledge Seiſin by the Hands of ſome certain Perſon. *D.* 6 *Co.* 59. *b.*

And this ſince the *St.* 21 *H.* 8. 19. which enables an Avowry for Lands ſubject to Rent, as well as before. *Co. Lit.* 268. *b.* 9 *Co.* 36. *a.*

And he muſt alledge Seiſin by the Hands of him, who has the Freehold at leaſt. 6 *Co.* 57, 8. 1 *Rol.* 314. *D.*

But Seiſin in Law is ſufficient. 4 *Co.* 9. *a.* 10. 1 *Rol.* 314. *B.* *Vide Seiſin*, (E.)

So, it is ſufficient to alledge Seiſin of Rent where he avows for Homage, without ſaying *de quibus Servitiis fuit ſeiſitus*. *R. Win. Rep.* 31. *Win. Ent.* 859. (or 973.) *cont.*

And therefore Seiſin of Homage is ſufficient for all other Services. 4 *Co.* 8. *b.*

Seiſin of any Superior Service is ſufficient for all Inferior Services. 4 *Co.* 8. *b.* 1 *Rol.* 315. *G.*

Seiſin of an Annual Service is ſufficient for all caſual Services. 4 *Co.* 8, 9.

Tho' not for another Annual Service. 4 *Co.* 9. *a.*

So Seiſin by Recovery, or by voluntary Payment without Coercion, is ſufficient. 4 *Co.* 9. *b.* 11. *b.*

So Seiſin need not be alledged within forty Years, tho' by the *St.* 32 *H.* 8. 2. Avowry ſhall not alledge Seiſin of any Rent, *&c.* above forty * Years, *&c.* for this ſhall come from the other Side, by Plea in Bar to the Avowry. *Dy.* 315. *b. R.* 9 *Co.* 65. *a. D.* 9 *Co.* 36. *a.*

* In *Cay's Statutes*, it is 50 Years.

So Seiſin by Diſſeiſor, or Feoffor after Feoffment, is ſufficient. 6 *Co.* 58. *a.* 1 *Rol.* 314. *l.* 50.

By the Common Law the Defendant muſt avow on a Perſon certain. *Co. Lit.* 269. *b.*

And it ſhould be upon his very Tenant, generally, *viz.* his Tenant in Right and in Fee. 9 *Co.* 21. *a.*

And therefore, if the Tenant was diſſeiſed, before Acceptance of the Services of the Diſſeiſor or a Deſcent to his Heir, the Lord muſt avow upon the Diſſeiſee, otherwiſe, upon ſhewing the Matter, the Avowry ſhall abate. *Co. Lit.* 268. *a.*

So, if the Donee was diſſeiſed or made a Diſcontinuance, the Donor muſt avow upon the Donee, otherwiſe he ſhews the Reverſion out of him, and his Avowry ſhall abate. *Co. Lit.* 269. *a.* 3 *Co.* 30. *b.*

If Tenant in Fee makes a Feoffment, the Feoffee after the Death of the Feoffor, or Acceptance of the Services of him, ſhall compel the Lord to avow upon him. *Co. Lit.* 269. *b.*

But during the Life of the Feoffor, and before Acceptance of the Services of the Feoffee, the Lord might have avowed upon the Feoffor or Feoffee at his Election. *Ibid.*

At Common Law, if there was a Leſſee for Life or Donee in Tail with Remainder over, the Lord might have ſhewn it, and avowed upon the Leſſee or Donee, as his very Tenant *in Forma prædict'*. *Co. Lit.* 269. *a.* 20 *H.* 6. 9. *b.*

If the Lord had a particular Eſtate, he might have avowed upon the Tenant *in Forma prædicta*, without naming him his very Tenant, which imports himſelf to have a Fee. *Co. Lit.* 269. *a.*

If a Seigniory, *&c.* came to a Guardian in *Chivalry*, he might have avowed upon the Special Matter, as within his Fee and Seigniory. *Co. Lit.* 269. *b.*

But now by the *St.* 21 *H.* 8. 19. The Lord may avow, or others make Conuſance upon the Lands holden of him, without naming any Perſon certain.

Yet, he may avow at Common Law, if he pleaſes. *Co. Lit.* 268. *b.* 269. *b.* 9 *Co.* 36. *a.* 23. *b.*

And if he avows upon Land, without avowing upon any Perſon in certain, it is good by the Statute, tho' he names a certain Perſon for Tenant, *&c.* which the Statute does not require. *R.* 1 *Leo.* 301. *Semb. Mo.* 870.

So, if Cattle are driven out of the Lord's View, and taken, upon Purſuit, in other Land, the Lord may avow by the *St.* 21 *H.* 8. 19. *R.* 9 *Co.* 22. *a.*

So, if the Defendant avows for Rent, *eo quod D.* holds of him by Fealty and Rent, which Eſtate the Plaintiff has, it is not material or traverſable, for by the Statute he may avow upon the Land, and *which Eſtate the Plaintiff has*, ſignifies nothing. *R. Mo.* 883.

To Avowry for Rent and Services, the Plaintiff in Bar may diſclaim. 9 *Co.* 34. *b.* (3 K. 16.) Bar to it.

So he may diſclaim, generally, and thereon ſhall have Judgment; but the Lord may have a Writ of Right upon the Diſclaimer. *Mod. Int.* 306.

Or confeſs the Avowry. *Mod. Int.* 319.

Or plead, *out of his Fee*, generally. *R.* 28 *H.* 6. 10.

So he may plead, *out of his Fee*, without diſclaiming, which will be perilous. 9 *Co.* 34. *b.* 28 *H.* 6. 10. 21 *H.* 7. 20. *a.*

Or he may plead generally *Nul Tenure*. *Clift* 638. *R. cont. and a Repleader awarded.* 2 *Cro.* 127.

Or he may confeſs the Tenure in Part, and traverſe the Tenure *Modo et Forma*. *R.* 9 *Co.* 33. *a.* 36. *a.* *Lut.* 1212.

And, if it is found for the Plaintiff, he ſhall have Judgment, tho' the Avowry was for Rent, the Tenure by which was confeſſed. *R.* 9 *Co.* 36. *a.* *R. Cro. El.* 799.

If he alledges Tenure for Part of the Land, he may alledge that this and other Land is held by ſuch Services, and traverſe that only Part is ſo held. 9 *Co.* 35. *b.*

So he may confeſs the Tenure and traverſe the Seiſin. 9 *Co.* 33. *a.*

But the Plaintiff cannot traverſe the Seiſin of Services generally. 9 *Co.* 34. *b.* 22 *H.* 6. 3. *Fitzh. Avowry* 15.

For, if the Lord had not Seiſin of the Services, the Plaintiff ought to confeſs the Tenure and traverſe the Seiſin. 9 *Co.* 33. *b.*

(* In the Statute, according to *Cay*, it is 50 Years.)

So ſince the *St.* 32 *H.* 8. 2. he may plead, *never ſeiſed within forty* * *Years*. 8 *Co.* 64. *b.* *Mod. Int.* 322.

If he was ſeiſed only for Part of the Services, he may plead that the Tenure was by Part, but never ſeiſed for the Reſidue within forty Years. 9 *Co.* 34, 5.

So he cannot plead Tenure of a Stranger, and traverſe the Tenure. 9 *Co.* 35. *a.* *R.* 10 *H.* 6, 6. *b.* for he muſt diſclaim, or plead, *out of his Fee*. 10 *H.* 6. 6, 7.

But this Plea is not good, if the Avowry is for Caſual Service, as Fealty, &c. *R.* 3 *Lev.* 21.

So, if the Tenancy is granted by Fine, &c. to the King, the Lord cannot avow generally for Rent-Service. *R.* 1 *And.* 160.

So now ſince the *St.* 21 *H.* 8. 19. The Plaintiff in Replevin in Bar to Avowry for Rent may plead, *Nothing in Arrear*. *R. Ray.* 254, &c.

Tho' he does not make any Title to the Land. *Ray.* 258.

Tho' he is only Leſſee for Years, or a Stranger. *Ray.* 254.

[On Avowry for Rent, and Iſſue thereon, Plaintiff cannot give Evidence to ſet off a mutual Debt; but by way of ſpecial Plea to Avowry, he may plead mutual Debt of more than the Rent. *Barnes* 450.]

So he may plead all Pleas, which he had by the Common Law, except Diſclaimer. 2 *Cro.* 127. *Co. L.* 268. *b.*

As, he may plead, *out of his Fee*. 2 *Cro.* 127. *Mod. Int.* 303.

Or traverſe the Tenure. 2 *Cro.* 127. *D.* that he ſhall plead no Plea, but a Diſclaimer, or *out of his Fee*. *Mo.* 870.

So the Plaintiff may plead in Bar to an Avowry, *De ſon Tort*, with a Traverſe that *Locus in quo*, &c. is Parcel of the Tenements alledged to be held. *Raſt. Ent.* 556. *b.*

But by the Common Law before 21 *H.* 8. a Stranger to the Avowry, *viz.* he, upon whom the Avowry was not made, could not diſclaim.

Nor could plead, *out of his Fee*, or any Thing *tantamount*. 22 *H.* 6. 2. *b.*

Nor *Nothing in Arrear*. 22 *H.* 6. 2. *b.*

Nor *Levy by Diſtreſs, and ſo Nothing in Arrear*. 22 *H.* 6. 3. *a.*

But in theſe Caſes he ought to pray in Aid of the very Tenant, and then diſclaim or plead theſe Pleas. 22 *H.* 6. 2. *b.*

So Plaintiff to an Avowry for Rent upon him as very Tenant cannot ſay *Nient ſeiſie*, for this amounts to a Diſclaimer, and therefore he muſt diſclaim. 21 *H.* 7. 20. *a.*

[If on Avowry for Nonpayment of Rent, a Plea in Bar is *de injur. ſua propria, abſque hoc quod præd. R. cæpit*, &c. *Non cæpit* is no good Traverſe, he ſhould purſue his Title, and *de injur. ſua propria* is enough. *Hornblower* v. *Grimes*, *H.* 6 *G.* 2. *Fort.* 362.]

(3 K. 17.) For Relief, &c.

The Defendant avows for Relief like as for other Services. 3 *Lev.* 142. *Vide Ante*, (3 K. 15.)

And he need not make mention of the Relief in his Avowry; but of the Tenure only; for the Relief is incident to it. *R.* 3 *Lev.* 145.

And if it be ſevered by Releaſe, &c. it muſt be ſhewn on the other Side. 3 *Lev.* 145.

If

(3 K. 18.) For a Rent-charge.

If the Avowry be for a Rent-Charge, the Avowant muſt ſhew his Title to the Rent: As, by a Grant to him in Fee.

Or in Tail, or for Life. *Co. Ent.* 590.

By Deviſe to him, or his Wife. 2 *Sand.* 195.

By Grant or Deviſe to ſuch an one, under whom the Defendant derives his Title.

By Grant or Deviſe to ſuch an one, to whom the Defendant is Executor or Adminiſtrator, and avow for Arrears in his Life. *Win. Ent.* 1015.

So, he ought to ſhew that *Locus in quo, &c.* is Parcel of the Land charged, for to ſay *quod eſt et Tempore quo, &c. fuit* is not ſufficient; for this imports no more than that it was ſo at the Diſtreſs. *R.* 2 *Vent.* 150. 4 *Mod.* 150.

But the Avowant need not alledge Seiſin of the Rent, where the Commencement appears by Deed. 8 *Co.* 65. *a.*

As, if he avows for a Rent-charge. *Ibid.*

Or for Rent reſerved upon a Gift in Tail. 1 *Rol.* 314. *l.* 10.

Or upon a Demiſe for Life or Years.

Or for a Rent in Fee, reſerved by Deed, upon a Conveyance in Fee. *R.* 8 *Co.* 65.

So, if the Rent is reſerved by Act of Parliament. *Cro. Car.* 81.

In Bar to an Avowry for a Rent-charge the Plaintiff may ſay *Quod non conceſſit.*

He may demand *Oyer* of the Grant and demur,

He may ſay that the Grantor was ſeiſed in Tail, *&c.* and traverſe the Seiſin in Fee.

That the Rent was extinguiſhed by a Fine. *Win. Ent.* 821. (or 935. Edit. 1680.)

That he made a legal Tender.

(3 K. 19.) For Rent upon a Reſervation.

If the Avowry is for Rent upon a Reſervation, he muſt ſhew that he, or *A.* from whom the Reverſion deſcended, or was aſſigned, was ſeiſed, and made a Leaſe to the Plaintiff for Years, or at Will. 2 *Saund.* 310. *Tho. Ent.* 264. *Clift* 640.

So he may ſay, that he holds by Copy or Demiſe.

Or, that Part is Copyhold, Part Freehold, which he demiſed. *Clift* 640.

That A. ſeiſed, leaſed to the Plaintiff, the Reverſion deſcended to Parceners, and one aſſigned his Part to the Defendant, who avows for his Part of the Rent.

That A. being ſeiſed, demiſed to him, who leaſed to the Plaintiff, for a leſs Term; for it is not ſufficient to ſhew the Commencement of the Term to the Plaintiff, without ſhewing a good Title in himſelf, by which he could make a good Leaſe to the Plaintiff. *R. Sal.* 562.

[If Defendant avows for Rent, and ſhews that *A. habens titulam,* demiſed to him, and he to Plaintiff, it is ill; for he ſhould ſhew the Commencement of the particular Eſtate. *Reynolds* v. *Thorpe, P.* 1 *G.* 2. *Str.* 796.]

That he, being ſeiſed in Fee, made a Gift in Tail to B. rendring Rent, for tho' the Gift is in Tail, he may avow upon the Reſervation. 1 *Rol.* 314. *l.* 10.

And he need not ſhew Seiſin of the Rent, where he avows upon a Reſervation; for it is ſufficient that he has the Reverſion. 1 *Rol.* 314. *l.* 10. *Vide Ante,* (3 K. 18.)

[If Leſſee for Years aſſigns his whole Term, and there is no Clauſe of Diſtreſs, he cannot diſtrain for Rent. ——— v. *Cooper, P.* 8 *G.* 3. 3 *Wilſ.* 375.]

(3 K. 20.) Bar to it.

In Bar to an Avowry for Rent reſerved, the Plaintiff may plead as in Bar to Debt for Rent: As, *Nihil in Tenementis. Vide Ante,* (2 W. 48.)

[*Nil habuit in tenementis* is no Plea (even for a Stranger) ſince 11 *G.* 2. *c.* 19. *Syllivan* v. *Stradling, H.* 4 *G.* 3. 2 *Wilſ.* 208.]

Non demiſit. Clift 641. 2 *Sand.* 312.

Nothing in Arrear.

Nothing in Arrear for Part of the Rent, and Tender of the Reſidue. *Clift* 646.

That the Avowant afterwards uſed or ſold the Cattle or Goods diſtrained. Lut. 1423.

After

After Iſſue joined upon a Plea in Bar to an Avowry, the Court will not ſuffer the Plea to be withdrawn, and the Avowry confeſſed, without Conſent, for the Avowant will loſe his Coſts. *Skin.* 594.

(3 K. 21.) For *Damage feaſant*. *Vide Poſt*, 3 M. 26.)

If the Defendant avows, or makes Conuſance for *Damage feaſant*, he muſt ſhew that the Place where, *&c.* is his Freehold, or the Freehold of *B.* under whom he makes Conuſance. *Lut* 1140.

And if he ſays that he himſelf or *B.* was ſeiſed, he muſt ſay of what Eſtate, in Fee, Tail, or for Life. *R. Lut.* 1232.

[In Replevin for taking Cattle in *Holloway* Road, Avowry for taking them in the Place where, *&c.* for that he took them Damage-feaſant in *Four-acre Cloſe*, and drove them along the Road to pound them, is good. *Mattravers* v. *Foſſet*, *T.* 12 *G.* 3. 3 *Wilſ.* 295.]

(3 K. 22.) Bar. His Freehold.

To this Avowry the Plaintiff may ſay in Bar, that it is his Freehold. *Vide Poſt*, (3 M. 34.)

Or the Freehold of A. and by his Licence he put his Cattle there. 1 *Co.* 64. *a. Vide Poſt*, (3 M. 34.)

Or a ſpecial Title by Deviſe, Fine, Demiſe, *&c.*

(3 K. 23.) Tender of Amends.

So the Plaintiff may ſay in Bar, *Tender of Amends.*

If the Defendant pleads that he was ſeiſed of three Acres *in Loco in quo*, *&c.* it is ſufficient, without ſaying how many Acres the *Locus in quo*, *&c.* had. *R. upon ſpecial Demurrer*, *Lut.* 1232.

(3 K. 24.) Bar by Common.

In Bar of an Avowry for *Damage feaſant*, the Plaintiff may ſay that he is intitled to Common in the Place where, *&c.* and this, Common appendant or appurtenant.

Common by Reaſon of *Vicinage*.

And he muſt ſhew in what *Vill* the Land lies, to which he claims Common. *R.* 2 *Cro.* 238.

That his Leſſor is intitled to Common for him and his Tenants. *Co. Ent.* 573. *b.*

If the Plaintiff preſcribes for Common, he muſt make a good Title to the Common, And for Common appendant or appurtenant, he muſt ſhew a Seiſin in Fee of the Land, to which he claims Common, and then alledge that he and all *Quorum Statum*, *&c.* Time whereof, *&c.* have had Common in ſuch Place, *&c.* 1 *Sand.* 346. *Co. Lit.* 113. *b.*

If he claims Common in *Groſs*, he need not alledge Seiſin of the Land, but only that he and all his Anceſtors have had, Time whereof, *&c.* Common in ſuch Place, *&c.* 1 *Sand.* 346.

If a Copyholder claims Common in another Manor, he muſt alledge Seiſin in his Lord, and that he for himſelf and his cuſtomary Tenants has Common in ſuch Place, *&c.* (*Vide* 2 *Sand.* 326.)

If he claims Common in a Waſte of the ſame Manor, he muſt alledge it by way of Cuſtom. *Co. Lit.* 113. *b.* *Vide Copyhold*, (K. 6.)

And he need not ſhew what Eſtate the Copyholders have in their cuſtomary Tenements. *R.* 2 *Sand.* 326.

If the Plaintiff is a Leſſee for Years, he muſt alledge a Seiſin in his Leſſor, who has the Fee, and preſcribe in him and all thoſe *Quorum Statum*, *&c.* and then derive the Term to himſelf, *&c.* for, if he alledges a Preſcription in himſelf, it is bad. *R. Cro. Car.* 599.

So he muſt alledge a Preſcription for Common, *Time whereof*, *&c.* where it is contrary to Common Right: As, for Common appurtenant, or by reaſon of *Vicinage*, and it is not ſufficient to ſay that All *habuerunt et habere conſueverunt*, without more. *R. Lat.* 161.

If he preſcribes for Common appendant, he ought to claim it only for Cattle *Levant and Couchant*. *R. Lut.* 1359. *R.* 1 *Sid.* 313.

But, if he preſcribes for Common appendant to a Houſe or Cottage it will be well, for this compriſes any Land. *R.* 1 *Sal.* 169. *Semb.* 1 *Brownl.* 198.

And for Cattle *Levant and Couchant* is ſufficient, without other Certainty. *R.* 1 *Brownl.* 198.

So he muſt alledge *Uſer* of the Common according to his Preſcription: As, if he claims Common for Cattle *Levant and Couchant*, he muſt ſhew that the Cattle put there were *Levant and Couchant*. 1 *Sand.* 28. *R. H.* 10 *An. in C. B.*

But the Omiſſion ſhall be aided after Verdict. 1 *Lev.* 196. *R.* 1 *Sand.* 227. *R.* 2 *Cro.* 44.

And after a general Demurrer. *R. cont.* 1 *Lev.* 196.

And if he claims Common appurtenant for a certain Number of Cattle, without ſaying *Levant and Couchant*, he need not ſhew that they were ſo. *R.* 2 *Cro.* 27.

If the Plaintiff claims Common for all *commonable* Cattle, he muſt ſhew that the Cattle put there were ſo. *Semb. Lut.* 1470.

If he claims Common, from the Time of cutting and carrying away the Corn, till the Land is ſown again, he muſt ſhew that the Cattle were put there within that Time. *R.* 2 *Cro.* 637. *Vide Pl. Com.* 33. *b.*

And he muſt ſay that no Part of the Land was ſown again. 2 *Cro.* 637.

To a Preſcription for Common the Defendant may reply *de ſon Tort*, with a Traverſe of the Preſcription. Replication.

Or with a Traverſe of the *Levancy* and *Couchancy*; for this goes to the *Giſt* of the Juſtification. *R. Win. Ent.* 972. *Per Holt, Mod. Ca.* 115. *Semb.* 1 *Sal.* 169.

Yet the Foddering of the Caſtle in his Yard is Evidence of their being *Levant and Couchant*. 1 *Sal.* 169.

(3 K. 25.) Bar by Way.

So in Bar of an Avowry for *Damage feaſant*, the Plaintiff may preſcribe for a Way. *Vide Chimin*, (D. 2.)

And he muſt ſhew what Way he claims in certain: As, whether it be for Horſes, *Carucis, &c. Vide Chimin*, (D. 2.)

And the *Terminus a quo* and *ad quem, &c. Vide Chimin*, (D. 2.)

To this Bar the Defendant may reply *De ſon Tort*, and traverſe the Preſcription. Replication.

Or acknowledge the Way, and ſay that the Treſpaſs was *extra Viam*. *Tho. Ent.* 297.

If the Defendant traverſes the Preſcription, the Plaintiff ſhall join Iſſue upon the Traverſe.

If he pleads *extra Viam*, the Plaintiff may rejoin to it *Non culp*. *Tho. Ent.* 297.

(3 K. 26.) By Force of a Warrant or Commiſſion, &c. *Vide Poſt*, (3 M. 23.)

So the Defendant may make Avowry by Authority of the Commiſſioners of Sewers. *Co. Ent.* 293. *a. Hern.* 643. *Bro. R.* 417.

By the *St.* 23 *H.* 8. 5. The Defendant may avow generally, that he took by Authority of the Commiſſioners of Sewers for an Aſſeſſment by ſuch Commiſſion. *Co. Lit.* 283. *a.*

But, if the Defendant waves the ſhort Pleading allowed by the Statute, and ſhews the ſpecial Matter, he muſt plead all Things ſufficiently, otherwiſe it will be bad. *Sti.* 12. *Lut.* 1180.

So he may avow by Virtue of a Warrant to diſtrain for the Poor's Rate, purſuant to the *St.* 43 *El. Lut.* 1179.

Or by Authority of the *St.* 15 *Car.* 2. for Regulation of the Militia. *Clift* 636.

So by Force of a Warrant upon a Conviction for Fraud in the Exciſe. *Lev. Ent.* 152.

(3 K. 27.) For an Amerciament.

So the Defendant may make Avowry for an Amerciament: As, for not appearing at a *Leet*. *Win. Ent.* 873. (or 986. Edit. 1680.) *R.* 3 *Leo.* 14. *Mo.* 89. *Bend. pl.* 227.

For departing, when ſworn upon the Homage, before Verdict given. *Co. Ent.* 570. *b.*

For refuſing to be Conſtable. *Co. Ent.* 572. *a.* 5 *Mod.* 124.

So for an Amerciament for ſtopping a Way, or other Offence preſented. *Co. Ent.* 573. *a.*

Or for taking Inmates.

In an Avowry for an Amerciament, the Defendant muſt ſhew the Leet or Court, where impoſed, to be duly held. *R. Cro. El.* 245.

And before whom. *R.* 1 *Brownl.* 198. *Semb.* 5 *Mod.* 96.

And over whom it has Juriſdiction. *R. Skin.* 393.

That he had ſpecial Notice of his Election to the Office for the Refuſal whereof it was impoſed. *R.* 5 *Mod.* 130.

So, that there was good Cauſe for the Amerciament: As, that it was for an Offence within the *Leet*. *R. Hob.* 129.

And in Replevin it is not ſufficient to ſay, that he was preſented for ſuch an Offence, but he muſt aver directly that ſuch Offence was committed. 1 *Sal.* 107. *Sho.* 61. *R. Cro. El.* 885, 6. 3 *Leo.* 8. *R. Carth.* 74. *R. F,g.* 46, 108.

Otherwiſe in Treſpaſs. *R.* 1 *Sal.* 107. *Sho.* 61. *Carth.* 74. *Skin.* 587.

And *licet fuit cul.* is not a ſufficient Averment. *F,g.* 109.

[If Defendant avows in Replevin, as Bailiff, for an Amerciament, he muſt aver that Defendant was guilty, for here he is an Actor; tho' in Treſpaſs it is not neceſſary, for there the Conviction juſtifies the Officer. *Stephens* v. *Haughton, M.* 3 *G.* 2. *Str.* 847.]

[The Amerciament muſt be by the Court, not by the Jury, and there muſt be an Affeerment. *Ibid.*]

So, he muſt ſhew an Amerciament at a Sum certain; for without that, an Affeerment is not ſufficient. *R. Hob.* 129.

So he muſt ſhew that the Amerciament was affeered by Affeerors. *R.* 3 *Lev.* 19. *Adm. Mo.* 89.

And he muſt ſhew the Names of the Affeerors. *R. Kel.* 66. *a.*

So, the Names of the Suitors before whom preſented. *R.* 3 *Leo.* 8.

Or aſcertained by the Jury. *Semb. F,g.* 109.

So he muſt ſhew the Precept. 1 *Sal.* 108. *Sho.* 62. 3 *Mod.* 137. *R. Mo.* 573, 604. *Semb. cont. Carth.* 74. *Acc. Skin.* 587.

And where made. *R.* 1 *Brownl.* 198.

But if the Amerciament is general, *Ideo in Miſericordia*, and afterwards affeered, it is ſufficient. *R.* 1 *Sal.* 56.

Or, if it is aſſeſſed at a Sum certain. *Per Holt, Sho.* 62.

(3 K. 28.) For Cuſtoms.

So he may make Avowry for a cuſtomary Demand: As, for a Fine due by Cuſtom upon an Alienation. 2 *Vent.* 132.

So, for a Fine impoſed by the Leet, *&c.* for a Contempt.

So for a Toll due by Cuſtom.

So for a Heriot due by Cuſtom. *Co. Ent.* 613. *a. Lut.* 1310. *Vide Copyhold*, (K. 23.)

Or for Heriot-Service. 8 *Co.* 103.

So for Breach of a By-Law. *Win. Ent.* 900. (or 1014. Edit. 1680.)

[If Defendant makes Conuſance that he diſtrained for a Forfeiture incurred by Breach of a By-Law he muſt ſet forth the By-Law. *Gerriſh* v. *Rodman, H.* 11 *G.* 3. 3 *Wilſ.* 155.]

But, if the Avowry is for a Thing due againſt Common Right, a Cuſtom muſt be alledged to diſtrain for it. *R.* 1 *Sal.* 175. *Vide Diſtreſs*, (A. 1.)

Yet where the Avowry ſhews that the Duty is due, it is ſufficient without alledging Performance of that, which was the Conſideration for the Duty: As, if it ſays that a Burrough in Conſideration of maintaining the Port ſhall have Toll, *&c.* it need not alledge that the Port was in Repair, for it is ſufficient that they are bound to repair it. *R.* 1 *Sal.* 249.

(3 K. 29.) Judgment in Replevin.

(3 K. 29.) For the Plaintiff.

If there be Judgment for the Plaintiff for Want of a Replication to the Bar to the Avowry, or upon a Demurrer, a Writ of Inquiry of Damages ſhall be awarded.

So, if the Defendant, *relictâ Verificatione, cognovit Actionem*, or there is Judgment againſt him by *Nihil dicet, &c.*

Or at the Requeſt of the Plaintiff, by the Aſſent of the Defendant, the Juſtices may aſſeſs the Damages without a Writ of Inquiry.

If the Judgment is upon a Verdict, the Jury uſually aſſeſs the Damages. 2 *Sand.* 315.

Or the Jury after Verdict may be diſmiſſed, and Damages aſſeſſed by the Juſtices with the Defendant's Conſent.

So, if the Jury do not aſſeſs Damages, the Plaintiff may make a Suggeſtion upon the Roll that the Cattle are ſtill detained, whereupon a Writ ſhall go to inquire of the Value of the Cattle and the Damages, upon which the Plaintiff ſhall have Judgment for both.

If there is Judgment for the Plaintiff in Replevin *qu. adhuc detinet* by Default after Appearance, there ſhall be a ſpecial Writ of Inquiry for the Value of the Cattle, or Goods, and Damages. *F. N. B.* 69. *L. Co. Ent.* 611. *a.*

But where the Taking was lawful, the Damages ſhall be only for the Detainer: As, in Replevin by the Lord for the Goods of his *Villain*, or for Goods taken *Damage feaſant* and detained after Amends tendred. *F. N. B.* 69. *F. G.*

(3 K. 30.) For the Defendant.

If there is Judgment for the Defendant upon a Demurrer or Verdict, or the Plaintiff is nonſuited, the Defendant ſhall have *Return irrepleviſable. Vide Poſt*, (3 K. 31.)

The Defendant ſhall have Return, tho' he pleads *Non cepit* after a *Withernam* awarded. *Sal.* 581.

Or claims Property. *Sal.* 581.

If the Plaintiff is nonſuited, when the Defendant avows for Rent, the Juſtices may aſſeſs Damages without a Writ of Inquiry. 3 *Leo.* 213.

And by the *St.* 17 *Car.* 2. 7. On Diſtreſs for Rent on the Lands chargeable, if the Plaintiff in Replevin, by Plaint or Writ depending in any Court at *Weſtminſter*, be nonſuited before Iſſue, the Defendant may make Suggeſtion in Nature of an Avowry, or Conuſance to ſhew Cauſe of Diſtreſs, and the Court ſhall award a Writ to inquire, *&c.* what Arrear, and the Value of the Diſtreſs, of the Execution of which 15 Days Notice ſhall be given to the Plaintiff or his Attorney.

By the ſame Statute, on Return of the Inquiſition the Defendant ſhall have Judgment to recover the Rent-arrear, if the Goods diſtrained amount to it, otherwiſe, to the Value of the Diſtreſs with full Coſts, for which he may have Execution by *Fieri facias, Elegit, &c.* 1 *Sand.* 195.

By the ſame Statute, if the Plaintiff be nonſuited after Avowry, or Conuſance, and iſſue joined, or a Verdict be for the Defendant, the Jury who were to try the Iſſue ſhall inquire what Arrear, and the Value of the Diſtreſs, and the Defendant ſhall have Judgment and Execution *ut ſupra.*

So, *by the ſame Statute*, if Judgment be for the Defendant upon Demurrer, the Court ſhall award a Writ to inquire the Value of the Diſtreſs, and on Return the Defendant ſhall have Judgment for the Arrears mentioned in the Avowry or Conuſance, if the Diſtreſs amount to that Value, otherwiſe, to the Value of the Diſtreſs, and his full Coſts, and Execution *ut ſupra.*

If the Avowry is for Rent-Charge, as well as for Rent-Service, the Jury ſhall inquire what Rent was in Arrear, and the Value of the Cattle diſtrained. *Adm.* 1 *Lev.* 255.

So, if the Avowry is for the Poor's Rate, or other Duty, the Jury ſhall inquire how much is due. *Semb.* 5 *Mod.* 76.

But

But if the Jury omit inquiring what Rent is in Arrear, it cannot be ſupplied by a Writ of Inquiry; for it muſt be by the ſame Jury, who try the Iſſue. *R.* 1 *Lev.* 255. 1 *Sal.* 205.

Yet, if the Plaintiff is nonſuited, it may be ſupplied by a Writ of Inquiry. *Semb.* 5 *Mod.* 76. *R.* 5 *Mod.* 77.

It may be ſupplied by a Writ of Inquiry, where the Avowry was for the Poor's Rate, and the Plaintiff nonſuited. *Sal.* 205.

So, if the Jury find the Value of the Diſtreſs, and not what Rent in Arrear, by which he cannot have Judgment upon the Verdict, yet if he thinks fit he ſhall have Judgment at Common Law. *R. Ray.* 170. 1 *Sid.* 380.

[If the Plaintiff is nonſuited for Want of Plea in Bar, the Avowant may ſue the Sureties on the Bond, and need not execute a Writ of Inquiry for the Damages. *Waterman* v. *Yea*, *M.* 30 *G.* 2. 2 *Wilſ.* 41.]

[If Plaintiff is nonſuited for Want of Declaration, and *Retorn. Habend.* awarded, and then Plaintiff ſues out Writ of ſecond Deliverance, yet afterwards Avowant may execute Writ of Inquiry of Damages; for tho' Writ of ſecond Deliverance is *Superſedeas* to *Retorn. Habend.* yet it is not to Writ of Inquiry. *Cooper* v. *Sherbrooke*, *P.* 33 *G.* 2. 2 *Wilſ.* 116.]

[If Goods diſtrained are not replevied, but by Conſent of Attornies remain in Diſtrainer's Hands, without Writ of *Re. fa. lo.* or Appearance; after Verdict for Plaintiff the Court will ſet aſide all Proceedings. *Barnes* 451.]

(3 K. 31.) Execution.

After Judgment for the Defendant, by the Common Law, a Writ *de Retorno habendo* was awarded, which was irrepleviſable.

Where the Judgment was upon a Demurrer, or after a Verdict. 14 *H.* 7. 6. *b.*

But if the Judgment was upon a Nonſuit before Verdict, he ſhall have *Return*, but not *irrepleviſable*. 14 *H.* 7. 6. *b.* 34 *H.* 6. 5. *a.*

If upon a Writ *pro Retorno habendo* the Sheriff cannot find the Cattle, there ſhall be a *Capias in Withernam* upon the Return of *Elongata*. 2 *Leo.* 174.

So, if after *Withernam* in Proceſs the Defendant *in Homine Replegiando* found Bail and pleaded, and there is Judgment againſt him, and he is ſurrendered, he ſhall be detained upon the firſt *Capias in Withernam*. *R. Sal.* 582.

Or, if he does not ſurrender himſelf, another *Capias in Withernam* ſhall iſſue againſt him. *Sal.* 582.

But, after *Withernam* upon a *Retorno habendo*, if the Defendant tenders in Court the Damages aſſeſſed by the Jury, and alſo a Fine for his Contempt, the Proceedings upon the *Withernam* ſhall be ſtaid. *R.* 2 *Leo.* 174.

So, after Judgment for *Return irrepleviſable*, if the Owner of the Cattle or Goods tenders all that is due upon the Judgment, and it is accepted, there ſhall be a Writ of *Delivery* for the Goods. 2 *Inſt.* 107.

So, if he tenders the Whole upon the Judgment, which is aſcertained by the Avowry, and is refuſed, he ſhall have *Detinue*. 2 *Inſt.* 107.

[In Replevin in County-Court, removed by *Recordari*, and Verdict for Avowant, and Inquiry as to the Value, purſuant to *Stat.* 17 *C.* 2. *c.* 7. the Avowant ſhall not have the Replevin-Bond delivered to him to ſue the Parties; but muſt either have Judgment and Execution for the Sum ſettled by the Jury, purſuant to that Statute, or he muſt take the ancient Remedy, which is, to have Writ *de Retorno habendo*; and if Sheriff returns *Averia elongata*, then a Writ to have *Retorn* of the Beaſts of the Pledges; and if that returned *Nihil*, then *Sc. fa.* againſt the Sheriff *quod reddat ei tot. Averia*, *Combes* v. *Cole*, *H.* 10 *G.* 2. *B. R. H.* 352.]

(3 K. 32.) Recaption.

So, if, pending Replevin for a former Diſtreſs, the Lord diſtrains his Tenant again for the ſame Cauſe, he ſhall have a *Recaption*. *F. N. B.* 71. *E.*

To *Recaption* the Defendant does not avow as in Replevin, but juſtifies; for the Plaintiff ſhall not recover Damages for the Taking or Detaining of his Cattle, but only Damages for the Defendant's Contempt againſt Law. 1 *Rol.* 320. *l.* 10.

(3 L) Pleading in Scire facias.

(3 L. 1.) When it lies.

(3. L. 1.) By the Common Law.

BY the Common Law a *Scire facias* lies after a Year and a Day after Judgment given in a Real Action, to execute ſuch Judgment. 2 *Inſt.* 469. *Adm.* 1 *Sal.* 258. *Vide Execution*, (I. 4.)

So to execute a Fine. 2 *Inſt.* 470. *Vide Execution*, (A. 6.)—*Fine*, (E. 15.)

And upon a Judgment in Ejectment. *R. Sal.* 258, 600.

So in Annuity. 1 *Sal.* 258, 600.

So in perſonal Actions, if the Plaintiff or Defendant die within a Year and a Day, there cannot be an Execution before a *Scire facias* by or againſt the Executor or Adminiſtrator. 1 *Rol.* 900. *l.* 15, 20.

So, if one Plaintiff die, the Survivor ſhall not have Execution before a *Scire facias*. *Mo.* 367. *R. cont. Noy* 150.

The Survivor ſhall not have an Execution by *Elegit*, for the Heir ſhall be contributory. *Per Holt*, 1 *Sal.* 320.

So, if a Recognizance is given for good Behaviour, he cannot be indicted for a Breach of the Recognizance before a *Scire facias* upon it; for he may have a Plea for his Excuſe. 1 *Rol.* 900. *l.* 5.

So a *Scire facias* lies upon a Judgment in Annuity. *Per Holt*, *Sal.* 600.

So, if a Conuſee dies, his Executor cannot ſue upon the Recognizance, to have an *Elegit*, without a *Scire facias* againſt the Conuſor, tho' it is within the Year. *F. N. B.* 267. *D.*

Nor if the Conuſor dies within the Year, againſt his Executor, Heir or *Tertenant*. *F. N. B.* 267. *D.*

But by the Common Law a *Scire facias* does not lie in perſonal Actions after a Year and a Day after Judgment. 2 *Inſt.* 469. *Dub. per Holt*, *Sal.* 600.

Nor upon a Recognizance acknowledged. 2 *Inſt.* 469.

So it is not neceſſary where the King was Plaintiff. *Sal.* 603.

(3 L. 2.) By the *St. W.* 2. 45.

Yet by the *St. W.* 2. 45. a *Scire facias* was given to have Execution upon a Judgment in perſonal Actions after the Year and Day. *Co. Lit.* 290. *b.*

And *by the ſame Statute* a *Scire facias* lies after the Year and Day upon a Recognizance. 2 *Inſt.* 470.

But a *Scire facias* is neceſſary, where the Judgment is ſuperſeded by Error, tho' the Year and Day paſs. *Vide Poſt*, (3 L. 4.)

So, it is not neceſſary, where no Alteration of Parties is made: As, if one Plaintiff dies after Judgment, Execution may be ſued in the Name of both without a *Scire facias*. *Noy* 150.

So, if Error is ſued and Judgment affirmed, and afterwards one of the Plaintiffs dies. *R. Mo.* 367. *Adm.* 5 *Mod.* 339.

So, if one Plaintiff dies, the Survivor alone may ſue out Execution, without a *Scire facias*; for he is Party to the Judgment. *Cont. Mo.* 367. *R. acc. Noy* 151. *Adm. Sho.* 404. *Adm. Cart.* 194.

So, if Error is brought by ſeveral Defendants, and afterwards one dies, whereby the Error is abated, Execution may be ſued againſt the Others without a *Scire facias*. *Dub. Sho.* 404. *Semb.* 5 *Mod.* 339. 1 *Sal.* 319.

So, if two ſue Execution by *Scire facias*, and one dies after an *Elegit* awarded, the Survivor ſhall have an *Alias Elegit* without a *Scire facias*. *R. Cart.* 113, 123, 180, 194.

Yet, where Judgment is given and Execution delayed beyond the Year and Day by Injunction in *Chancery*, there muſt be a *Scire facias*. *R.* 1 *Sal.* 322.

If Execution is ſued after the Year and Day without a *Scire facias*, the Execution ſhall be ſuperſeded upon Motion. *Mod. Ca.* 288.

But if Execution is ſued after the Year and Day without a *Scire facias*, it is not void, but voidable by Error. *R.* 3 *Lev.* 404. 1 *Sal.* 261. *R. cont.* 4 *Leo.* 197.

A *Scire facias* lies of Courſe within 10 Years after Judgment; but after ten Years, it muſt be upon Motion. *Pr. Reg.* 209.

(3 L. 3.) *Scire facias* upon Judgment.

(3 L. 3.) How it ſhall be ſued. *Vide Bail*, (R. 1, &c.)

A *Scire facias*, tho' it is but a Judicial Writ, is in the Nature of an Action, and a Releaſe of Actions, or of Executions, diſcharges it. *Co. Lit.* 290. *b.*

If it is to have Execution of a Judgment, the Judgment muſt be entred upon Record before the *Scire facias* ſued, and it is not ſufficient that it is ſigned by the Officer. *Per Glinn. Pr. Reg.* 494.

If Judgment was given 10 Years before, it ſhall not be awarded without Motion in Court. *Pr. Reg.* 495. *Sal.* 598.

And the Record of the Judgment muſt be in Court; for it is the Foundation and Warrant for the *Scire facias*. *Pr. Reg.* 495.

If it was ſeven Years before, there muſt be a Motion at the Side Bar. *Sal.* 598.

If after Judgment revived by *Scire facias*, the Defendant dies before Execution, there ſhall be another *Scire facias* without Motion. *Sal.* 598.

A *Scire facias* againſt a Defendant ſays *in hac Parte*. *Sal.* 599.

Againſt the Bail it ſays in *eâ Parte*. *Sal.* 599.

The *Scire facias* muſt be ſued in the ſame Court, where Judgment was given, if the Record remains there. *Vide Execution*, (I. 1.)

And to the Sheriff of the ſame County, where the Original Action was. *Pr. Reg.* 495. *R. Hob.* 4. *Yel.* 218.

And upon Return of *Nulla Bona* in the ſame County, there may be a *Teſtatum Scire facias* to the Sheriff of another County. 2 *Leo.* 67.

But if a Debt, after Recovery in *B.* is aſſigned to the King, a *Scire facias* may iſſue out of the *Exchequer*. *R.* 2 *Leo.* 67.

A *Scire facias* ought to be as ſhort as poſſible. *Pr. Reg.* 496.

And therefore it is ſufficient, tho' it be as general as the Record upon which it is founded. *Mod. Ca.* 296.

And an immaterial Variance from the Record does not prejudice: As, an Omiſſion in the Stile of the King. *R.* 3 *Mod.* 227.

So *Scire facias Executor'* of ſuch an One is ſufficient, without naming him. 1 *Leo.* 17.

But it muſt recite the Judgment that was given. *Cro. El.* 817.

And before what Judge. *Pr. Reg.* 497. *R. Sal.* 517.

If the Record is ſpecial, it is ſafe to recite it, as it was pleaded. *Dy.* 34. *b.*

It muſt be againſt all the Defendants together. *R. Sal.* 598.

A *Scire facias pro Valore et Dampnis* upon a Judgment in Dower muſt mention the Recovery of Seiſin. *Off. Br.* 303, 305. By the *St. Mert.* 1. She may recover the Value and Damages, *uſque Diem quo Seiſinam recuperaverit.* 2 *Inſt.* 80.

If a Recognizance was taken before a Judge, and not entred in Court, and the Plaintiff declares upon a Recognizance in Court, it is Variance. *R. Sal.* 564, 659.

And ſuch Variance cannot be amended. *R. Sal.* 52.

If the *Scire facias* be upon a Judgment in Ejectment for two Meſſuages, where the Judgment was of one Meſſuage. *R.* 1 *Sal.* 52.

So it ought to conclude, *Quare Executio fieri non debet*, and therefore if *non debet* is omitted, it is bad. *Lut.* 1282.

If the Judgment be againſt two and one dies, it ſhall be againſt the Survivor, *Quare* Execution againſt his Goods, and a Moiety of his Lands, and againſt the Heir and *Tertenants* of the Deceaſed, *quare* Execution againſt them for a Moiety of his Lands *habere non debet*. *R. Carth.* 107.

[If Defendant dies after Writ of Inquiry executed, and before the Return, and the *Sci. fa.* is to ſhew Cauſe why new Writ of Inquiry ſhould not be awarded, it ſhall be quaſhed; for it ſhould be to ſhew Cauſe why the Damages aſſeſſed ſhould not be recovered. *R. on Demurrer. Compton* v. *Leeds*, 13 *G.* 1. *C. B. Goldſworthy* v. *Southcott*, *H.* 22 *G.* 2. *B. R.* 1 *Wilſ.* 243.]

If it be by an Executor, it muſt make a *Profert* of the Letters Teſtamentary in the Middle or at the End. *R. Carth.* 69.

But a *Scire facias* againſt *Tertenants* need not ſhew by what Title they entred. *R.* 1 *Lev.* 312.

It need not recite all the Proceedings upon which the Judgment was given, but the Judgment only. *R. Carth.* 149.

[The Term of the Recovery need not be inſerted. *Barnes* 431.]

The *Scire facias* muſt not be teſted upon a *Sunday*; for it is not *Dies Juridicus*. *Dy.* 168. *a.*

There ought to be ſeven Days between the *Teſte* and Return of every *Scire facias*; and therefore 14 Days between the *Teſte* of the firſt and Return of the ſecond *Scire facias*. *R.* 2 *Jon.* 228. *R.* 9 *W.* 3. *B. R.* (*Reported in Comyns's Reports* 53.) *Sal.* 599. *Skin.* 633.

So a *Scire facias* muſt be delivered to the Sheriff four Days at leaſt before the Return. 2 *Jon.* 228. A convenient Time. *Sal.* 599.

[If it has lain four Days in the Office, Summons upon it may be made any Time before the Court is up, on the Return-Day. *Obrian* v. *Frazier*, *M.* 12 *G. Str.* 644.]

By *Rule* in *B. R.* the ſecond *Scire facias* ought not to be ſued out till the firſt is returned. *Sal.* 599. *Cont. Skin.* 633.

[Declaration may be entitled of the Term generally tho' the *Sci. fa.* is returnable the laſt Return. *Ward* v. *Ganſell*, *H.* 11 *G.* 3. 3 *Wilſ.* 154.]

[It may be quaſhed on Plaintiff's Motion, after Appearance, without Coſts. *Barnes* 431.]

(3 L. 4.) Upon what Judgment.

A *Scire facias* lies *quare Executionem non* upon every Judgment, upon which Execution is not ſued within a Year and a Day, if the Judgment was not given with a *Ceſſet Executio* to ſuch a Time, for then the Year ſhall be computed from that Time. *Mod. Ca.* 288.

Tho' Execution be ſued in Part. *Lut.* 1264.

So, tho' Execution is ſued, but not continued for a Year and a Day. 2 *Leo.* 77, 78. *Carth.* 2.

It lies upon a Judgment in a real Action. *Vide Execution*, (A. 4.)—(I. 4.)

Upon a Judgment in Ejectment, where a Stranger enters after Judgment. *R. Lut.* 1268. 3 *Lev.* 100. *Clift* 676, 7.

So, it lies upon a Judgment *quod computet*. 1 *Vent.* 258.

So, if Error is brought of the Judgment after the Year, which is quaſhed and void, there ought not to be Execution, without a *Scire facias*; for the Writ of Error being void, does not revive the Judgment. *R.* 1 *Rol.* 899. *l.* 40.

So, if there is an Injunction out of Chancery, whereby Execution is ſtayed for a Year, there ſhall not be Execution afterwards without a *Scire facias*. *R. Mod. Ca.* 288.

[If on Judgment of *Michaelmas* Term, Execution is ſtopt by Injunction, and afterwards taken out teſted the laſt Day of the ſubſequent *Michaelmas* Term; it is irregular, without *Sci. fa.* A Writ of Error is Matter of Record, which the Court can take Notice of, but an Injunction is not. *Winter* v. *Lightbound*, *P.* 6 *G. Str.* 301.]

Therefore it is not neceſſary, where the Judgment was ſuſpended by Error, tho' a Year and a Day are paſſed before Judgment affirmed. *R. Cro. El.* 416, 706. *R.* 1 *Rol.* 899. *l.* 20. *R.* 1 *Sal.* 261. *R. Lane* 20. *R. Godb.* 372.

Nor where the Judgment is affirmed within the Year, tho' the Execution is ſued out of the Court where the Judgment is affirmed. *R.* 5 *Co.* 88. *a. Cont. Pr. Reg.* 208.

Nor

Nor where the Judgment is affirmed, or the Plaintiff is nonſuited or diſcontinues in Error, tho' the Year was expired before Error brought. *R.* 1 *Rol.* 899. *l.* 25, 35. *R.* 2 *Cro.* 364. *Lane* 20.

[If a Delay of Execution for a Year has ariſen from the Defendants by Bills for Injunctions, and by obtaining Time for Payment, Execution may be ſued out without a *Scire facias*; and if a Rule to ſhew Cauſe why it ſhould not be ſet aſide is obtained, the Court will diſcharge it with Coſts. *Mickel* v. *Cue*, *M.* 32 *G.* 2. 2 *B. M.* 660.]

(3 L. 5.) By whom.

After the Year and Day a *Scire facias* lies between the ſame Parties as were Parties to the Judgment. *Theſ. Br.* 224.

If the Plaintiff dies, *Scire facias* lies by his Executor or Adminiſtrator within a Year. 2 *Inſt.* 395. *Th. Br.* 240. *Vide Execution*, (E.)

If the Judgment is by an Executor or Adminiſtrator *durante minore Ætate*, the Executor at his full Age may have *Scire facias*; for he is privy to the Judgment. *R.* 1 *Rol.* 889. *l.* 2.

Or by an Executor upon Condition that upon ſuch an Act *B.* ſhall be Executor. *Dub.* 1 *Rol.* 889. *l.* 5.

So now by the *St.* 17 *Car.* 2. 8. If an Executor or Adminiſtrator obtains Judgment, and dies before Execution, an Adminiſtrator *de Bonis non*, *&c.* ſhall have a *Scire facias* upon ſuch Judgment. *Vide Adminiſtration*, (G.)

So, if he dies after the Money levied by the Execution, and it remains in the Sheriff's Hands, he may perfect the Execution. *R.* 1 *Sal.* 323.

(3 L. 6.) Againſt whom.

So, if Defendant dies after Judgment, a *Scire facias* lies within a Year againſt his Executor or Adminiſtrator. *Lut.* 1273, 4. *Th. Brev.* 241.

So in Ejectment it lies againſt an Executor and a Stranger who entred after Judgment. *R. Lut.* 1268. 3 *Lev.* 100. *Vide Ante*, (3 L. 4.)

Or againſt *Tertenants* generally, or by ſpecial Name. *Sal.* 600.

If it be againſt *A. tenen' Præmiſſorum*, it ſhall be intended Tenant at the Time of the *Liberate*. *R. Jon.* 90.

So, if Judgment is recovered againſt an Executor or Adminiſtrator, who dies, a *Scire facias* lies upon it againſt the Adminiſtrator *de Bonis non*, *&c.* being alſo Adminiſtrator of the Executor. *R. Per* 3 *J. Jon.* 214. *R.* 1 *Rol.* 890. *l.* 35. *Cro. Car.* 167.

So againſt the Executor of an Adminiſtrator againſt whom the Judgment was given, if he has waſted the Goods of his Inteſtate. *Clift* 679.

(3. L. 7.) When it does not lie.

But a *Scire facias* does not lie, where there wants Privity: As, by an Adminiſtrator *de Bonis non*, *&c.* and upon a Judgment by an Executor or Adminiſtrator till the *St.* 17 *Car.* 2. 8. *Jon.* 248. *Vide Ante*, (3 L. 6.)—*Adminiſtration*, (G.)

Nor by the Heir, where his Anceſtor had ſued an *Elegit*. *R. Lane* 16.

Nor by the Adminiſtrator of an Adminiſtrator upon a Judgment by his Inteſtate, for a Debt due to the firſt Inteſtate; tho' the Debt is brought into Court he cannot take it; tho' he alſo obtained Judgment by Miſtake, for it is erroneous. *Lat.* 140.

So it does not lie, tho' there is Privity, by him, who has no Intereſt in the Thing recovered: As, if Huſband and Wife recover Land in Right of the Wife, and the Wife dies, the Huſband ſhall not have a *Scire facias* upon the Judgment. *Jon.* 248.

So, if Huſband and Wife as Executrix or Adminiſtratrix recover. *R. Jon.* 248. 1 *Rol.* 889. *l.* 10. *Vide Baron and Feme*, (Z.)

Yet, where Husband and Wife have a Judgment for a Debt to the Wife, the Husband alone ſhall ſue Execution without a *Scire facias*. *R Mod.* 179. *Vide Baron and Feme*, (E. 3.—Z.)

So, it does not lie againſt the Heir and *Terre-tenants* of the Tenant in Dower, after Judgment againſt him and Seiſin awarded, if he dies before Inquiry of Damages. *R.* 3 *Lev.* 275.

Nor

Nor by the Adminiſtrator of the Demandant in Dower, if ſhe dies before Damages and Coſts aſſeſſed. *Dub.* 3 *Lev.* 275.

(3 L 8.) Judgment in *Scire facias* upon Default. When without two *Scire facias's*.

If upon a *Scire facias* the Sheriff returns *Scire feci*, and the Defendant makes Default, there ſhall be Judgment againſt him.

So in *C. B.* if a *Scire facias* goes upon a Judgment for Debt and Damages againſt the Defendant himſelf, who was Party and Privy to the Judgment, and the Sheriff returns *Nichil*, and the Defendant makes Default, there ſhall be Judgment againſt him without awarding a ſecond *Scire facias*. *Dy.* 168. *a.* 2 *Inſt.* 472. *Sal.* 599.

(3 L. 9.) When not.

But in all Caſes, where the Sheriff returns *Nichil* upon a *Scire facias* in *B. R.* another *Scire facias* ſhall be awarded. 2 *Inſt.* 472. 2 *Mod. Ca.* 227.

And if upon the ſecond *Scire facias* the Sheriff returns *Nichil*, and the Defendant does not appear, there ſhall be Judgment againſt him. *Dy.* 168. *a.* 198. *a.* 172. *a.* 201. *a.*

So in a *Scire facias* upon a Recogniſance in *C. B.* there ſhall not be Judgment againſt the Defendant upon his Default till two *Nichils* are returned. *Dy.* 168. *a.*

Nor in a *Scire facias* upon a Judgment in *C. B.* where the Defendant was not Party to the Record, as if it be againſt an Executor or Adminiſtrator, *&c. Ibid.*

So, if the Defendant after Judgment takes Husband, and the *Scire facias* is againſt her Husband and her. *Per C. B. P.* 9 *An.*

Nor in a *Scire facias* in *C. B.* for any Cauſe, except upon a Recovery for Debt and Damages againſt a Party to the Record. *Dy.* 168. *a.*

As, if *Nichil* is returned upon a *Scire facias* againſt a Conuſee after Judgment in *Audita Querela* to be relieved from a Recogniſance by an Infant, there muſt be a ſecond *Scire facias*. *R.* 2 *Cro.* 59.

So, if the *Scire facias* is againſt two, and the Sheriff, as to one, returns *Scire feci*, and *Nichil* as to the other, there ſhall be a ſecond *Scire facias* againſt both. *Per tot. Cur.* 1 *H.* 4. 5. *a.*

If there is Judgment againſt the Defendant by Default after a *Scire feci* returned, he is without Remedy, tho' there was no Judgment originally given. *R.* 1 *Lev.* 41.

So, if the *Scire facias* is againſt an Heir, who, being warned, ſuffers Judgment by Default, he ſhall have no Remedy in Law, tho' his Father was only Tenant for Life, Remainder to him in Fee. *R.* 1 *Lev.* 41.

So, if the Remainder was to him in Tail. *R.* 1 *Lev.* 41. 1 *Sid.* 54. *Ray.* 19.

So, in any Caſe, where he has Matter pleadable to the *Scire facias*. 1 *Sal.* 264.

But after Judgment upon two *Nichils* returned, the Defendant may be relieved upon Motion without an *Audita Querela*. 1 *Sal.* 93, 264.

[After two *Nichils* and *Scire fieri* Inquiry, *Devaſtavit* returned, and traverſed; if the Defendant does not apply in a reaſonable Time, the Court will not relieve on Motion. *Wharton* v. *Richardſon*, *T.* 11 *G.* 2. *Str.* 1075.]

(3 L. 10.) Pleas to a *Scire facias*. What are allowed.

To a *Scire facias* the Defendant may plead in Abatement or in Bar. 2 *Inſt.* 470.

To *Aide*, *Receipt*, and *Age*, ſhall be allowed. *Ibid.*

But Proceſs of Summons, Attachment, and for a View, are ouſted by the *St. W.* 2. 45. 2 *Inſt.* 470.

So *Eſſoin* of the Tenant, Defendant, *Prayee in Aid*, or Plaintiff himſelf. 2 *Inſt.* 470.

So Protection ſhall not be allowed. *Ibid.*

So the Defendant cannot plead Matter contrary to the Title, upon which the Recovery was obtained. *Ibid.*

Nor a Thing which proves the Judgment only erroneous and voidable. *Ibid.*

Nor Error pending of the ſame Judgment. 4 *Mod.* 248. *Semb. cont. Sho.* 186.

[If Defendant pleads to *Sci. fa. quare, &c.* that Plaintiff ſhould not have his *Action* (inſtead of Execution,) it is well enough. *Grey* v. *Jones, T.* 4 *G.* 3. 2 *Wilſ.* 251.]

(3 L. 11.) To a *Scire facias* upon a Judgment. In Abatement.

And therefore to a *Scire facias* upon a Judgment the Defendant may plead in Abatement, that there are not fifteen Days between the *Teſte* and Return. *Lut.* 25. *Vide Abatement*, (H. 14.)

Quod non tenet ſpecially: As, that he has only for Years. *R.* 3 *Lev.* 205. *Co. Ent.* 620, 624. *a. Vide Abatement*, (F. 13.)

But general *Non-tenure* is no Plea. *R.* 3 *Lev.* 205. Yet, it was pleaded generally, tho' nothing done upon it. 2 *Sand.* 12. *R. no Plea. Cro. El.* 872. *R. Sal.* 601.

So, where Tenants are returned Tenants of ſeveral Parts, they cannot join in a Plea of Seiſin in another. *R. Sal.* 601.

So they cannot plead *Non-tenure* by Implication: As, *that ſuch a one is ſeiſed of the Freehold. R. Sal.* 601.

That he holds jointly with B. R. Mo. 524.

That there was no Scire facias *againſt the other Defendant. Sal.* 598. *R.* 2 *Cro.* 506, 507.

That there are other Tertenants not named. R. 2 *Sand.* 8, 23. *R. Mo.* 525.

Or, if the Return does not ſay, that *A. B. &c.* are all the *Tertenants*, it is bad. *R. Sal.* 598.

That there are Tertenants in another County againſt whom there is no Scire facias. *R.* 2 *Vent.* 104. *Clift* 672.

But ſuch Plea ſhall conclude, *ſi reſpondere debet*; for it is not directly in Abatement. 2 *Sand.* 8. *R.* 2 *Vent.* 105. *R. Sal.* 601. *Mod. Ca.* 236.

And if it be that there are other *Tertenants* in another County, it ſhall not ſay, *not named, nor returned. R.* 2 *Vent.* 105.

So this Plea after a Plea in Bar does not avail. *Jon.* 319.

Upon ſuch Plea, the Plaintiff may take a new Writ againſt other Tertenants. 2 *Sand.* 23.

(3 L. 12.) In Bar. By an Executor or Adminiſtrator.

So to *Scire facias* againſt an Executor or Adminiſtrator, the Defendant may plead in Bar that he had fully adminiſtred *Die Impetrationis* of the *Scire facias. Off. Br.* 253. 2 *Sand.* 220. *Vide Ante*, (2 D. 9.)

Ne unques Executor. Mod. Int. 367.

So, Judgment againſt him upon a prior *Scire facias*, upon a *Scire fieri* Inquiry and *Devaſtavit* returned. *Cro. El.* 886.

Or ſuch prior *Scire facias* pending, and no ſubſequent Aſſets. *R. Cro. El.* 886.

But *plene adminiſtravit* and *Nulla Bona* will be bad upon a ſpecial Demurrer. *R.* 4 *Mod.* 296. 1 *Sal.* 296. *Semb. Al.* 48. *Off. Br.* 302. *R. Cro. El.* 575. He ought to plead, *Nothing in his Hands. Skin.* 565.

So he may plead *Nul tiel Record. Mod. Int.* 368. *Vide Ante*, (2W. 13.)

So by the *St.* 4 & 5 *An.* 16. *Payment*, if the Defendant has paid the Money due on ſuch Judgment.

So, a Thing which ſhews the Writ to be miſtaken: As, if a *Scire facias* upon a Judgment againſt *A.* and *B.* is brought againſt the Adminiſtrator of *B.* as Survivor, the Defendant may ſay, that *A.* ſurvived. *R.* 1 *Sal.* 262.

So he may plead a Releaſe to the Teſtator or himſelf. 3 *Lev.* 272. *Vide Ante*, (2 W. 30.)

Or a Releaſe by the Executor of the Plaintiff.

Or, by one Executor or Adminiſtrator, or to one Executor or Adminiſtrator. 3 *Lev.* 272.

But, it is no Plea, that by Deed the Plaintiff agreed that, if he obtained Judgment, he would not take out Execution if the Defendant paid 100 *l.* which

Money

Money he has paid; for there can be no Defeaſance of a Judgment before it is given. *R. Cro. El.* 837.

It is no Plea in a *Scire facias* upon a Judgment againſt himſelf, that there is another Judgment againſt the Teſtator unſatisfied; for he might have pleaded it to the firſt Action againſt him. *Dy.* 80 *a. in Marg. R.* 1 *Sal.* 315.

That the Bond, upon which the Judgment was obtained, was upon an Uſurious Contract. *R.* 1 *Sid.* 182.

So he may plead Outlawry of the Plaintiff before the firſt Judgment in Battery, *&c.* for tho' it was no Bar to the Action, becauſe the Damages *were uncertain*, yet it ſhall be a Bar to the *Scire facias*, when the Judgment has aſcertained the Damages. *R. Jon.* 239.

So he may plead, that the Plaintiff's Teſtator became *Felo de ſe.* 1 *Sand.* 355.

That Error is depending upon the Original Judgment. Skin. 590.

So he may plead, that the Plaintiff levied Debt and Damages by *Fieri facias* againſt the Teſtator. *Clift* 675. *R.* 4 *Leo.* 194. *Cro. Car.* 328.

But it is no good Plea, that the Plaintiff levied Part by *Fieri facias*, and agreed to accept 10 *l.* at ſuch a Day for Satisfaction of the Reſidue, which was paid accordingly; for Payment is no Plea to a Debt upon Record. *R.* 3 *Lev.* 119. *Lev. Ent.* 164.

Quod Teſtator cepit per Ca. Sa. in Execution, and afterwards permitted him *ire ad Largum. Off. Br.* 300. *Sal.* 271.

That he obtained Judgment in C. B. upon the ſame Judgment. R. Cro. El. 8 7.

So, it is no Plea, *quod cepit Teſtator' per Ca. Sa.* who died in Execution. *Off. Brev.* 245.

That he paid the Money recovered without Acquittance. Jon. 326, 7.

So, to a *Scire facias* againſt an Heir, he may plead, *Reins per Diſcent. Semb.* (3 L. 13.) By an Heir.
Dy. 344. *Cro. Car.* 295.

Or, pray that the *Parol* may demur, if the Heir is within Age. 2 *Inſt.* 396. *Cro. Car.* 295.

And if it is found againſt the Heir, there ſhall be Execution againſt him for a Moiety only, and not for the Whole; for the Heir is charged only as *Terretenant. R. Cro. Car.* 296, 313. *R. Jon.* 87. *Poph.* 154.

If there are ſeveral Heirs, as *Parceners*, in *Gavelkind*, *&c.* and a *Scire facias* is againſt one only, he ſhall have Contribution againſt the Others. 3 *Co.* 12. *b.*

So, if Part of the Land deſcended to the Heir of the Part of the Father, other Part to the Heir *de Parte Matris.* 3 *Co.* 13. *a.*

But, it is no Plea, that before the *Scire facias* the Heir levied a Fine to the Uſe of himſelf in Fee. *Semb. Co. Ent.* 622. *b.*

So, if the Heir alone is charged, he ſhall not have a *Scire facias* againſt a Purchaſer. *R.* 3 *Co.* 12, 13.

So, if there be a *Scire facias* againſt an Heir, or *Terretenants*, after Judgment againſt the Anceſtor, he ſhall not plead any Matter in Avoidance of the Judgment, tho' the Judgment was by *Nil dicit:* As, that *A.* for whoſe Sufficiency the Anceſtor was bound, was ſufficient. *R. Sav.* 25. *b.*

So, if Judgment be againſt *A.* and *B.* and one dies, a *Scire facias* lies againſt the Survivor, and it is no Plea that the Deceaſed has an Heir to whom Aſſets deſcended. *R.* 1 *Lev.* 30.

So, if the *Scire facias* be againſt both, he may take Execution, after Judgment againſt both, by *Elegit*, or by *Fieri facias*, againſt the Survivor only. 1 *Lev.* 30.

So, to a *Scire facias* againſt a *Terretenant*, he may plead in Bar any Thing, (3 L. 14.) By Terretenants.
which ſhews his Lands not liable to Execution: As, that the Defendant in the Original Action enfeoffed himſelf, or others, under whom he claims, before the Judgment, with Traverſe of the Seiſin *Tempore Judicii aut unquam poſtea. Off. Brev.* 251.

If there be a Traverſe of the Seiſin and Iſſue thereon, he ſhall be adjudged to be ſeiſed, tho' he made a Feoffment, if it was with an Intent to defraud Creditors. *R. Hob.* 72.

So *Terretenants* may plead, that the Heir has ſufficient by Deſcent, whereof the Plaintiff might have Execution. *Co. Ent.* 620.

That the Original Defendant was not ſeiſed of the Lands in their Poſſeſſion.

That the Original Defendant was Tenant in Tail and died, and his Iſſue levied a Fine to the Terretenant. Co. Ent. 621.

That the Defendant in the Judgment was not ſeiſed in Fee, Th. Br. 272, 273, 289.

That he enfeoffed the Terretenant and before Judgment diſſeiſed him, whereupon the Terretenant after Judgment re-entred. Off. Br. 302.

So *Terretenants* may plead that they have Nothing but a Reverſion after a Term of Years, and pray *Judicium ſi Executio* during the Term. *Clift* 671.

So a *Terretenant* may plead *Nul tiel Record.*

A Releaſe to him by the Plaintiff.

But it is no Plea for a *Terretenant*, that the Heir has Aſſets; for tho' the Plaintiff may ſue Execution againſt the Heir alone, without naming the Purchaſer; yet it is not of Neceſſity. 2 *Inſt.* 396. *Semb. Co. Ent.* 620.

That no Scire facias *was awarded againſt the Executors*; tho' they have Aſſets. *Semb. Dy.* 208. *a.*

Nor, *no* Scire facias *againſt him as Heir but as Terretenant only*; tho' he was Heir. *R. Cro. El.* 896.

(3 L. 15.) By the Defendant himſelf.

So to a *Scire facias* after the Year and Day againſt the Defendant himſelf, he may plead *Nul tiel Record. Off. Br.* 279.

That the Debt was levied by Fieri facias. *Clift.* 675.

[He cannot plead that the Warrant of Attorney was given on an uſurious Contract. *Buſh* v. *Gower, P.* 9 *G.* 2. *Str.* 1043. *B. R. H.* 233.]

(3 L. 16.) *Scire facias* upon a Recognizance.

So a *Scire facias* may be ſued, upon a Recogniſance given in *Chancery*, againſt the Conuſor himſelf. 2 *Sand.* 6.

Or againſt his Heir, or *Terre-tenants.*

So, againſt them upon a Recogniſance in *B. R.* or *C. B.*

Or before the Chief Juſtice or other Judge out of Court.

So, after the Debt ſatisfied, a *Scire facias ad computandum* lies by the Conuſor againſt the Conuſee. *Vide Statute-Staple,* (G.)

So, if a Conuſor dies, a *Scire facias* may be ſued againſt his Heir. 1 *Rol.* 900. *l.* 35.

And it may be ſued againſt him without the *Terre-tenants*; for he ſhall have no Contribution any more than the Conuſor himſelf. 1 *Rol.* 900. *l.* 37. 2 *Inſt.* 396.

Or it may be ſued againſt the Heir and *Terre-tenants. Cro. Car.* 295.

And, if it be returned that there is no Heir, or that the Heir is dead, or that he was warned, and not otherwiſe, it may be ſued againſt the *Terre-tenants.* 1 *Rol.* 900. *l.* 45.

So, if the Conuſee extends Part of the Lands of the Conuſor only, the *Terre-tenant* may have a *Scire facias* in the Nature of an *Audita Querela* againſt him, or an *Audita Querela* at his Election. *R. Jon.* 90.

A *Scire facias* upon a Recogniſance muſt purſue the Recogniſance.

[It cannot be teſted the ſame Day the Party makes default. *Rex* v. *White, H.* 18 *G.* 2. *Str.* 1220.]

[*Scire facias* againſt Bail in Error, on a Judgment for Damages, muſt be to ſhew Cauſe why Plaintiff ſhould not have Execution of the *Debt* aforeſaid, (the ſpecific Sum in the Recognizance) not of the Damages. *Barlow* v. *Evans, T.* 18 *G.* 2. *Wilſ.* 98.

But if it concludes, *Quare Executionem non, &c. juxta Formam Recuperation' prædict'* inſtead of (*Recogn'*) it ſhall be amended, for it is Surpluſage. *R.* 3 *Mod.* 251.

[*Scire*

[*Scire facias* in the Petty-bag will lie on a Bond given to the late King, his Executors and Administrators, as within 33 *H.* 8. *c.* 39. *Rex* v. *Bradford, H.* 1 *G.* 2 *Ld. Raym.* 1327. *in Chancery.*

(3 L. 17.) *Scire facias* for other Cauſes.

So, if a Judgment be reverſed after Execution, a *Scire facias* lies for the Defendant againſt the Plaintiff for the Money recovered. *Jon.* 326.

If there be Judgment in Error to reverſe a Fine, a *Scire facias* lies againſt the *Terretenants*, and it lies before or after Judgment in the Diſcretion of the Court. *Hard.* 163, 4.

If there be Judgment for the Plaintiff in Replevin, and a Return is not made, a *Scire facias* lies againſt the Pledges. 2 *Mod. Ca.* 313. *Vide ante*, (3 K. 5.)

[*Scire facias* in Replevin will lie on Plaint, or on Writ. One may be Bail with others for himſelf; if *Elongat.* is returned for the Principal the Pledges may be ſued; if the Writ of Inquiry is reducible to a Certainty, it is enough; and Diſcontinuance is nothing in this Suit, unleſs it had been void or a Nullity. *Mulſo* v. *Shere*, *T.* 4 *G. Fort.* 330.]

(3 L. 18.) Judgment in a *Scire facias*.

Judgment in *Scire facias* depends upon the Original Judgment; for if this is reverſed, the Judgment in *Scire facias* does not ſtand in Force. 3 *Mod.* 187. *Vide Ante*, (3 L. 8, 9.)

[Judgment on a *Scire facias* cannot give Damages for Delay of Execution; but if it does, it may be reverſed for that, and affirmed *pro Reſiduo*. *Henriques* v. *Dutch Weſt-India Company*; on Error in *B. R. T.* 2 *G.* 2. *Affirmed in Parliament*, *Anno* 1730. *Str.* 807. *Ld. Raym.* 1532.]

[But if it is found that Plaintiff is *damnified*, and put to Coſts to 6*d.* it is well; for it is only meant as a Foundation for the Coſts *de Incremento*. Damages may mean Coſts. *Knox* v. *Coſtello*, *M.* 6 *G.* 3. 3 *B. M.* 1789.

(3 M) Pleading in Treſpaſs.

(3 M. 1.) The Original.

TRESPASS is *Vicontiel*, which gives Commiſſion to the Sheriff to hear and determine in his County. *F. N. B.* 85. *F.*

And thereon he may determine Treſpaſs to any Value. *Ibid.*

And it ſhall ſay *Vi et Armis*. *Ibid.*

Or Treſpaſs may be ſued by a Writ directed to the Sheriff, and returnable in *B. R.* or *C. B. F. N. B.* 86. *H.*

And this Writ ſhall always ſay, *Vi et Armis*. *Ibid.*

If it be for taking a live Chattel, the Writ uſually ſays, *cepit et abduxit*. *F. N. B.* 88. *B.*

If for a dead Chattel, *cepit et aſportavit*. *Ibid.*

If for moveable Chattels, *Pretii, &c. Reg.* 93. *b.*

If for immoveable, *ad Valentiam, &c. Ibid.*

But *Cepit et abduxit*, or *aſportavit*, may be uſed promiſcuouſly for live or dead Chattels.

So *Pretii*, or *ad Valentiam*, may be uſed promiſcuouſly for a live or dead Thing. *F. N. B.* 88. *M. Dy.* 121. *b.* 2 *Cro.* 307. 2 *Vent.* 174.

So, if it be omitted in Treſpaſs for taking Cattle, it is not fatal; for they may be returned. *Reg.* 97. *b.*

So the Omiſſion does not prejudice in any Caſe after Verdict. *R.* 1 *Sid.* 39. 2 *Vent.* 174.

Nor upon a general Demurrer. *Semb.* 2 *Cro.* 147. *Cont.* 2 *Lev.* 230.

(3 M. 2.) Proceſs.

The Proceſs in Treſpaſs is Attachment and Diſtreſs, and if upon the Attachment or Diſtreſs the Sheriff returns *Nichil*, a *Capias*, *Alias*, *Pluries* and *Exigent*, and Proceſs to Outlawry. 1 *Brownl.* 193.

If, at the Return of the Attachment, the Defendant does not appear, nor caſt an Eſſoin, he ſhall loſe the Goods attached. 1 *Brownl.* 193.

If he caſts an Eſſoin, he ſhall have a Writ to the Sheriff for Reſtitution of his Goods. *Ibid.*

Tho' he does not appear at the Day to which the Eſſoin is adjourned. *Ibid.*

When Treſpaſs lies or not, and by or againſt whom, *Vide Treſpaſs*, (A. 1, &c.)

When with a *Simul cum, &c. Vide Treſpaſs*, (C. 1.)

(3 M. 3.) Declaration.

(3 M. 3.) In what County alledged.

Declaration in Treſpaſs *Quare Clauſum fregit*, muſt be alledged in the County, where the Land lies.

So, for any Local Treſpaſs.

But for Battery, Taking of Goods, *&c.* it may be in any County. *Vide Action*, (N. 12.)

(3 M. 4.) Muſt be direct and poſitive.

It muſt be direct and poſitive; and therefore, if the Plaintiff declares, *quod cum* Defendant, *&c.* it is bad, for nothing is directly affirmed. *R. Cro. El.* 507. *Noy* 58. *R. after Verdict*, 2 *Bul.* 215. *Semb.* 2 *Lev.* 193, 206. *Fig.* 256.

Tho' the Defendant confeſſes and juſtifies the Treſpaſs. *R.* 2 *Jon.* 197.

So ſince the *St.* 4 & 5 *An.* 16. for this does not enlarge the former Statutes, after Verdict. *R. in C. B. P.* 2 *Geo. R. ibm. M.* 5 *Geo.*

So, if the Plaintiff declares *quare cum, &c. R. Sal.* 636.

[But *nec non de eo quod, &c.* after a *quod cum*, is a poſitive Charge. *Dobbs* v. *Edmonds*, *H.* 12 *G. Str.* 681. 2 *Ld. Raym.* 1413.]

[*Quod cum* is well enough after Verdict, though poſſibly it might be bad on Demurrer. *Douglas* v. *Hall*, *T.* 18 *G.* 2. 1 *Wilſ.* 99.]

[*Quod cum* is well on ſpecial Demurrer, where the Writ is ſet forth in the Declaration. *White* v. *Shaw*, *M.* 4 *G.* 3. 2 *Wilſ.* 203.]

(3 M. 5.) Muſt be certain.

It muſt be certain, and therefore muſt ſhew the Quantity and Quality of the Cattle or Goods taken. *R.* 5 *Co.* 34. *b. Vide Ante*, (C. 21.)

[The Goods muſt be ſpecified, for otherwiſe Defendant could not juſtify, nor could the Recovery be pleaded in bar to another Action. *Bertie* v. *Pickering*. *T.* 9 *G.* 3. 4 *B. M.* 2455.]

If the Word is general, as *tres Pullos, &c.* it muſt give an *Anglicè*. *Lut.* 1492.

But it is ſufficient that the Quantity, *&c.* is aſcertained by a Thing to which it refers: As, a Declaration, *quare Ciſtam cepit et diverſa Veſtimenta in Ciſta prædicta*, is good, without ſaying what Cloaths he took. *R. Al.* 9. *Vide Ante*, (C. 27.)

It muſt alledge the Time of the Treſpaſs before the Declaration filed; and therefore, if the Declaration is filed in *Trinity* Term, and the Treſpaſs alledged after the Term and before Trial, it is bad. 1 *Sid.* 308.

If it is alledged after the Declaration filed, at any Time, it is bad upon Demurrer.

If it is alledged after the Declaration and before Trial, it is bad after Verdict, except where the Jury find ſpecially, that the Defendant was guilty before the Declaration filed. *R.* 1 *Sid.* 308. *R. M.* 8 *W.* 3. *B. R. inter Blackhall and Heale*, (*Reported in Comyns's Rep.* 12.) *Sal.* 662.

But, if it is alledged at a Day after Trial, it will be aided by Verdict. *R. M.* 8 *W.* 3. *B. R. inter Blackhall and Heale.* (*Com. Rep.* 12. *Sal.* 662.) *Vide Ante*, (C. 19.)

Or

Or at an impoſſible Day. *R. M.* 8 *W.* 3. *B. R. int. Wall and Duke.* (*Cited in Comyns's Rep.* 13.)

If it is alledged that ſuch a Day the Defendant impriſoned him, and detained him twenty-four Days, without ſaying, when, it ſhall be intended immediately after the Impriſonment. *R.* 2 *Cro.* 664.

If it alledges *Et alia Enormia eis intulit* inſtead of *ei*, it is not material. *R.* 2 *Cro.* 664.

So, if it alledges the Treſpaſs in a Cloſe *vocat' A. abuttan' ſuper Terras B.* in *D.* the Cloſe ſhall be intended in *D.* *R.* 2 *Rol.* 251. *l.* 45.

It muſt be conformable to the Original; and therefore, if the Declaration is *quare Clauſa*, when the Original was *quare Clauſum fregit*, it is bad. *R. Cro. El.* 185. *Vide Ante*, (C. 13.) (3 M. 6.) Muſt be conformable to the Original.

If the Declaration is *quare Clauſum*, omitting *fregit*, and the Writ, *quare Clauſum fregit*. *Per* 2 *J. Vent. cont.* 2 *Vent.* 153.

But an immaterial Variance, or what may be ſupplied by Intendment, does not prejudice. 2 *Vent.* 153.

Nor a Miſtake of *Summon'* for *Attach'*. *Vide Ante*, (C. 13.)

It muſt be *Vi et Armis et contra Pacem*, for the Omiſſion is Subſtance. *R.* 2 *Cro.* 526, 536, 443. *Adm. Cro. Car.* 325. *R.* that it was Form. 2 *Cro.* 130. *R. Sal.* 636, 640. *Carth.* 66. (3 M. 7.) Muſt be *Vi et Armis*.

But now by the *St.* 16 & 17 *Car.* 2. 8. It is aided after Verdict.

And by the *St.* 4 & 5 *An.* 16. Upon a general Demurrer.

So, if it is recited in the Writ, it is ſufficient; tho' it is omitted in the Declaration. *R. Lut.* 1509. *Semb. Sti.* 408. *Dub. Fig.* 256. *Vide Ante*, (C. 12.)

It muſt be *contra Pacem nuper Regis & Regis nunc*, if the Treſpaſs is alledged in a former Reign. *R. Sho.* 28. *Adm.* 2 *Vent.* 49. 2 *Cro.* 377. *R. Sal.* 636. *R.* that it may be ſo. 11 *H.* 4. 15. *b.* (3 M. 8.) Muſt be *contra Pacem*.

But *contra Pacem nuper Regis et Regis nunc*, where the Whole was in a former Reign, is Surpluſage as to the Words *Regis nunc*, and ſhall be aided. *R.* 2*Cro.* 377. 3 *Bul.* 82. *R. Carth.* 95.

So *contra Pacem Regis nunc*, if Treſpaſs is ſuch a Year, which was in a former Reign; for the Court takes Notice of the King's Demiſe. *R. Sal.* 640.

It muſt mention the Goods to be ſo much *Pretii*, or *ad Valentiam, &c.* 2 *Lev.* 230. *Vide Ante*, (3 M. 1.)

But it is ſufficient, if it is in the Writ, tho' omitted in the Declaration. *R.* 1 *Sid.* 150. *Vide Ante*, (C. 13.)

And ſhall be aided after Verdict, and upon a general Demurrer, for it is Form only. 2 *Cro.* 148. *Vide Ante*, (3 M. 1.)

So the Declaration muſt ſay, that the Property, or at leaſt the Poſſeſſion, of the Land or Goods, *&c.* is in the Plaintiff, and therefore, if in Treſpaſs *ipſius Quer'*, or *ſua* is not inſerted, it is bad. *R.* 1 *Sid.* 184. (3 M. 9.) Muſt ſhew a Property or Poſſeſſion in the Plaintiff.

And it will be bad after Verdict. *Ibid.*

Tho' it is *Quare Clauſum fregit* of the Plaintiff, and *5 Carectat' Fæni ibidem cepit*, omitting *ſui*; for it ſhall not be intended the Plaintiff's Hay, tho' it is in his Cloſe, without being alledged. *R.* 2 *Lev.* 156.

So a Declaration by Husband and Wife for taking the Wife's Goods, is not good, without ſaying, that they were the Goods of the Husband; for it ſhall not be intended. *R.* 2 *Lev.* 20.

So a Declaration for taking Goods *a Perſonâ* of the Plaintiff ſhall not be intended in his Poſſeſſion. *R. per* 3 *J.* 2 *cont. Yel.* 36. 2 *Cro.* 46. 1 *Brownl.* 192.

So Treſpaſs by Dean and Chapter for entring the Cloſe of the Dean is not good. *R. Cro. El.* 200.

So Treſpaſs for taking *Triticum* out of his Cloſe in *D.* and ſuch a Thing *de Bonis* of the Plaintiff in *D.* for *de Bonis* of the Plaintiff does not extend to the *Triticum*. *R. Mod. Ca.* 15.

So

So Treſpaſs *quare Equos in Clauſo ſuo exiſten'*, *et* 10 *Congios Tritici de Bonis* Plaintiff *exiſten'*, does not ſhew a Property in the Horſes. *R. Sal.* 640.

But if, *ipſius Querentis* or *ſua* is in the Original recited, it is ſufficient, tho' omitted in the Declaration. *R.* 1 *Sid.* 187. *R. Lut.* 1509. *Vide Ante*, (C. 12.)

So, if the Defendant by his Plea ſhews the Goods to be in the Poſſeſſion of the Plaintiff, this aids the Declaration. *R.* 1 *Sid.* 185. *Vide Ante*, (C. 85.)

And, in Treſpaſs for Things which are *Feræ Naturæ*, and not reclaimed, the Plaintiff muſt not ſay, *ſuos*. *R.* 22 *H.* 6. 59. *b.*

As, in Treſpaſs *quare Cuniculos, Damas, Piſces, &c. cepit*, he muſt not ſay *ſuos*, or *ipſius*. *R.* 3 *Lev.* 227.

Yet, in Treſpaſs for taking Animals, which were *Feræ Naturæ*, if he ſhews them to be reclaimed, he may ſay, *ſuos*. 22 *H.* 6. 59. *b.*

Or for taking Monkeys, Parrots, *&c.* for they are Merchandize, and valuable. 2 *Cro.* 262.

Or for taking *feras Naturæ* in his Soil, Park, or Warren, for he has the poſſeſſory Property: As, *quare Clauſum fregit*, or *Parcum*, or *Warrennam fregit et Cuniculos ſuos, Damas ſuos, &c. ibidem invent' cepit, &c.* *R.* 22 *H.* 6. 59. *b.* 2 *Cro.* 195. *R. Cro. Car.* 553. 7 *Co.* 17. *b.* *R.* 9 *W.* 3. *B. R. inter Sutton and Moody.* (*Reported in Comyns's Rep.* 34.) *Dub.* 3 *Lev.* 227. *R. Sal.* 556. (*Vide* 1 *Ld. Ray.* 250.)

So in Treſpaſs, *quare Cuniculos ſuos, &c. cepit* generally is well after Verdict; for they ſhall be intended to be tame, or reclaimed, or dead. *R. Cro. Car.* 18. *R. Ray.* 16. *D. Cro. El.* 125. *Ow.* 93. *R.* 5 *Mod.* 375.

So, *quare Canem ſuum. R. cont.* 3 *Leo.* 219.

So, *quare Piſces ſuos in ſeparali Piſcaria Querentis cepit. R. Jon.* 440. *Cro. Car.* 553, 4.

So, if the Plaintiff declares *quare Glauſum in Uſu et Occupatione* of the Plaintiff, it is well. *R. P.* 3 *W. & M. inter Reynolds and Chubbs.*

Or, *quare Bona ſua, viz. unam Carectat' Fœni in Stabulo Defendentis cepit*, tho' he does not ſay *ſui*, for the *viz.* makes it a Particular of *Bona ſua*. *R.* 3 *W. & M.*

So, if he declares, *quare* 10 *Carectat' Soli ad Valentiam* 100*l.* and 10 *Pecias Maherem' ipſius Querentis ad Valentiam, &c.* it is ſufficient; for *ipſius Querentis* refers to both. *R.* 2 *Rol.* 250. *l.* 40.

(3 M. 10.) **When it may be with a *Continuando*.**

A Declaration in Treſpaſs may alledge it to be committed *continuando* from ſuch a Day to ſuch a Day. 2 *Rol.* 545. *l.* 15.

And this in Treſpaſs *Quare Clauſum* or *Domum fregit*, as well as for ſpoiling his Graſs, or cutting his Corn. *F. N. B.* 91. *L.* 2 *Rol.* 549. *l.* 37, 40. 1 *Sid.* 319.

Or, for cutting down ſeveral Acres of Wood. 1 *Sid.* 319.

Or, for *Meſne* Profits, and *aſport'* 500 *Carectat' Frumenti*. *Semb.* 1 *Sid.* 319.

[Treſpaſſes on different Days may be laid in one Count, for breaking, *&c.* on ſuch a Day, with a *Continuando*; and if there are more Counts, the Court, on Application, will reduce them to one. *Barnes* 360.]

And the *Continuando* may be for any Treſpaſs, which does not import Repugnancy, tho' the Act was not continued: As, for Treſpaſs *Pedibus ambulando*, tho' it be the Act of a Man. *Mod. Ca.* 39, 40. *Semb.* 5 *Mod.* 179. *Vide infra.*

Entring his Cloſe and killing his Conies. *R. Mod. Ca.* 39.

Entring and Hunting.. *R. Sal.* 639.

And the *Continuando* may be alledged for ſeveral Years, for 10, 12, or 500 Years. 2 *Rol.* 549. *l.* 47. 3 *Mod.* 110. 1 *Sid.* 253.

It may be to a Day after the Term began, if it be before the Bill filed. *D.* 1 *Vent.* 264.

But, regularly, a *Continuando* cannot be alledged in a Treſpaſs, which has not Continuance: As, for a ſingle Act, as, in Treſpaſs *quare Arborem ſuccidit, Equum cepit, &c.* *R.* 2 *Rol.* 549. *l.* 41. 1 *Sid.* 319. *R. Sal.* 639.

Nor for the Act of a Man, tho' the Act in it's Nature may be done upon ſeveral Days; for a Man cannot act continually ſeveral Days without Interruption by Sleep, Meals, *&c.* And therefore Treſpaſs, *quare ejecit* Billets *ſuper ſolum*

ſuum continuando Ejectionem, &c. is bad. *R.* 1 *Sid.* 224, 249. *R.* 1 *Vent.* 363. *Vide ſupra.*

So Treſpaſs, *quare Grana cepit et aſportavit continuando Aſportation'. Semb.* 1 *Sid.* 319.

Quare Occidit 20 *Cuniculos, &c. continuando. Mod. Ca.* 39. *Sal.* 639.

So the *Continuando* ought to be certain, and therefore *Continuando Piſcation'* without ſaying the Quantity and Quality of the Fiſh, is bad. *R. after Verdict by* 3 *J. Scrogs cont.* 1 *Vent.* 329. 2 *Jon.* 109.

So *continuando uſque Diem Exhibitionis Billæ*, without ſaying what Day, is bad; tho' it appears upon the Record. *Semb.* 2 *Rol.* 135.

So *continuando* to a Day after the Commencement of the Action, and entire Damages, is bad after Verdict. *D.* 1 *Vent.* 104. *R.* 1 *Vent* 264.

Yet *continuando Trangreſſion' prædict'*, generally, is good. 1 *Sid.* 224. 5 *Mod.* 179.

And if the Declaration is for one Treſpaſs, which may, and another which cannot be with a *Continuando*, the *Continuaudo Trangreſs' præd'* ſhall be reſtrained to the Treſpaſs only, which may, after Verdict. *R.* 1 *Sid.* 249, 319, 379. *R.* 1 *Vent.* 363. 2 *Jon.* 194. 3 *Lev.* 94. *R. Sal.* 639.

So *continuando Tranſgr' quoad, &c.* which is expreſſed *minus certe*, ſhall be aided after Verdict. *R.* 1 *Sid.* 249.

So a *Continuando* to a Day impoſſible, or after Trial. *Vide Ante*, (3 M. 5.)

So the Plaintiff may alledge the Treſpaſs with a *Continuando*, or that *diverſis Diebus et Vicibus inter* ſuch a Day and ſuch a Day, *&c. Sal.* 639.

So the Plaintiff may alledge a Matter for Aggravation of the Treſpaſs, tho' an Action is not maintainable for it by itſelf: As, Entry into his Houſe, and Battery of his Wife and Children, *&c.* tho' Treſpaſs does not lie for this without ſpecial Damage. *Sal.* 642.

Entry into his Cloſe *continuando uſque* 6 *Nov.* if the King pardons the Treſpaſs as to him to 25 *Sept.* no *Capiat'* is neceſſary, the *Continuando* being alledged for Aggravation. *R.* 2 *Cro.* 207.

(3 M. 11.) Pleas in Treſpaſs.

To Treſpaſs the Defendant may plead the General Iſſue, *Not Guilty.*

(3 M. 11.) Not Guilty.

Not Guilty *infra ſex Annos. Lev. Ent.* 203.

Or *infra* 4 *Annos.*

Tho' he was indicted and found Guilty, or ſubmitted to a Fine for the ſame Treſpaſs. 1 *Rol.* 863. *l.* 2.

And in Treſpaſs for Battery of his Servant *per quod Servitium amiſit*, generally, *Not Guilty*, is a proper Plea; for he cannot juſtify by *Molliter Manus, &c.* for this would not be a Loſs of Service. 1 *Rol.* 393, 4. *Per Powell, Lut.* 1497. *Semb.* 1 *Rol.* 19.

But in Battery, *not Guilty within ſix Years*, inſtead of four Years, is bad. *R. Mod. Ca.* 40. *Sal.* 423.

[On not guilty pleaded, a Freehold may be given in Evidence. *Bartholomew v. Ireland, H.* 11 *G.* 2. *Andr.* 108.]

(3 M. 12.) In Diſcharge. A Releaſe.

Or he may plead ſpecially: And this in Diſcharge, or in Excuſe or Juſtification.

In Diſcharge he may plead a Releaſe by the Plaintiff. *Vide Ante*, (2 V. 11.) (2 W. 30.)

If the Action be by Executors for Goods of the Teſtator, a Releaſe by one of the Executors. *Win. Ent.* 1005. (or 1119. Edit. 1680.)

So, if there are ſeveral Defendants in Treſpaſs, a Releaſe by the Plaintiff to one of the Defendants. 2 *Rol.* 412. *l.* 20. 2 *Bro. Ent.* 151.

Or in Treſpaſs againſt *B.* he may plead that the Treſpaſs was committed with *A.* and the Plaintiff releaſed to *A. abſque hoc* that it was done by him alone. *R.* 1 *Brownl.* 193. *R. Hob.* 66.

If the Releaſe be upon a Day before the Treſpaſs alledged, he muſt traverſe the Treſpaſs after. *R.* 4 *Mod.* 182.

[If a Releaſe is pleaded, Defendant muſt traverſe, that he was not guilty at any Time after, and before the bringing the Action. *Creed* v. *Lappan*, *P.* 6 *G. Fort.* 359.]

If a Releaſe is pleaded, he need not plead *Not Guilty* to the *Vi et Armis.* 1 *Brownl.* 196.

[A Releaſe in purſuance of an Award cannot be pleaded if Defendant is not Party thereto, but it may be given in Evidence in Mitigation of Damages; and if the Words are general, the Plaintiff ſhall not ſhew that the Cauſe of Action was not included. *Shelling* v. *Farmer*, *M.* 12 *G. Str.* 646.]

(3 M. 13.) Accord or Arbitrament.

Accord and Satisfaction. *Win. Ent.* 961, 962. (or 1075, 1076. Edit. 1680.) *Vide Accord*, (A. 1, &c.)

Or Arbitrament. *Bro. V. M.* 429. *Cl. Aſſ.* 179.

So an Accord or Arbitrament between the Plaintiff and one Defendant, if it is performed. 2 *Rol.* 412. *l.* 22. *R.* 9 *Co.* 79. *b.*

So, Satisfaction, tho' it is illegally obtained. 2 *Rol.* 569. *l. ult.*

Replication.

To Accord pleaded, the Plaintiff may reply *Nul tiel Accord. Win. Ent.* 961. (or 1075. Edit. 1680.)

Accord for another Matter with Traverſe of the Acceptance in Satisfaction of this Treſpaſs. *Bro. V. M.* 444.

That he is Guilty after Accord made. Win. Ent. 962. (or 1076.)

So, to Arbitrament the Plaintiff may reply, *Nul tiel Award.*

Or, *Nullum fecerunt Arbitrium. Bro. V. M.* 430.

That the Arbitrators were diſcharged. Cl. Aſſ. 180.

So, to Treſpaſs with Cattle the Defendant may plead that the Plaintiff diſtrained the Cattle *Damage-feaſant*, and impounded them.

But it is a good Replication, that the Cattle died in the Pound before Satisfaction.

Not, that they eſcaped out of the Pound without his Conſent. *Per* 3 *J.* 1 *Sal.* 248.

(3 M. 14.) Recovery in another Action.

Recovery in another Action. *Vide Action*, (K. 1, &c.)

(3 M. 15.) In Excuſe or Juſtification. To an Aſſault and Battery. *De Son Aſſault.*

In Excuſe or Juſtification of an Aſſault or Battery, the Defendant may plead *ſon Aſſault demeſne. Co. Ent.* 644. *a. Lut.* 1431.

Or Aſſault of her Husband, where the Treſpaſs is for Battery of the Wife. *R. Sal.* 407.

Aſſault by the Plaintiff, upon his Wife, or Son or Father. *Win. Ent.* 1007. (or 1121. Edit. 1680.) *Cl. Aſſ.* 90.

Aſſault upon his Maſter or Servant. 2 *Rol.* 546. *D. Ow.* 150. *Lut.* 1483. 1 *Sal.* 407. *Bro. V. M.* 484.

[If Servant juſtifies, for that Plaintiff *having* aſſaulted his Maſter, he, in Defence of his Maſter, ſtruck him, it is ill; it ſhould be, that Plaintiff would have beat his Maſter if he had not interpoſed. *Barfoot* v. *Reynolds*, *M.* 7 *G.* 2. *Str.* 953.]

Aſſault by the Plaintiff upon the Defendant to take his Dog, Goods, *&c.* to intrude into his Houſe, *&c.* 2 *Bro. Ent.* 144.

So he may plead *ſon Aſſault* in Treſpaſs for wounding. *R.* 1 *Sid.* 246. 1 *Rol.* 19.

Or in *Mayhem*, tho' every Aſſault is not ſufficient to maintain it. *Sal.* 642.

So in Aſſault againſt two, they may jointly plead *ſon Aſſault. R. Mo.* 704.

So he may plead *ſon Aſſault ad interficiendum*, or *mayhemandum*, in Treſpaſs for *Mayhem.* 2 *Rol.* 547. *l.* 40. *Co. Ent.* 52.

But the Defendant cannot juſtify a Battery in Defence of the Goods or Poſſeſſion of his Maſter. *Semb. Lut.* 1483. 1 *Sal.* 407.

Replication.

To this Plea the general Replication is *De Injuria ſua propria, &c.*

Or

Or he may reply that he *pacifice arreſtavit*, upon which the Defendant aſſaulted him.

That the Defendant would have aſſaulted her Husband, Father, Son, *&c.* *R.* 1 *Sal.* 407.

So the Defendant may plead, that he *molliter Manus impoſuit* to prevent Miſchief: As, if two contend, that he *molliter Manus impoſuit ad Eos ſeparand'.* 2 *Bro. Ent.* 143. (3 M. 16.) *Molliter manus impoſuit.*

Quod molliter Manus impoſuit upon the Plaintiff (who aſſaulted another) to keep the Peace. 2 *Bro. Ent.* 137, 8.

And *molliter Manus impoſuit* goes to the Juſtification of the Battery, as well as the Aſſault. *Dub. Lut.* 929. 3 *Lev.* 404. *Semb. cont. Cro. El.* 94. 2 *Vent.* 193. *R. Acc. Skin.* 387.

A Fortiori it does not go to the Wounding. *R. Cro. El.* 94. *Semb. Cro. El.* 243. *Skin.* 387.

So, that the Plaintiff ſet a Dog upon ſuch a one, and he *molliter Manus impoſuit* to reſtrain him. 2 *Rol.* 546. *l.* 40.

That the Defendant *molliter Manus impoſuit* upon the Plaintiff to reſtrain him from pulling down his Stall in a Fair. 2 *Rol.* 547. *l.* 15.

To reſtrain him from diverting his Water-courſe. 2 *Rol.* 547. *l.* 10.

From taking or deſtroying his Goods, &c. 2 *Rol.* 549. *l.* 7. 2 *Bro. Ent.* 143, 144.

From taking Cattle, &c. in his Cuſtody upon a Diſtreſs. 2 *Rol.* 549. *l.* 10.

Or reſcuing them. 2 *Bro. Ent.* 260.

From taking his Dog, Horſe, &c. *Cl. Aſſ.* 92. *Bro. V. M.* 486.

From reſcuing Goods taken in Execution, and he need not ſay by the Bailiff's Command. *R.* 3 *Lev.* 113.

Quod molliter Manus impoſuit, to remove him out of his Houſe or Cloſe. *Lut.* 1435.

[That Plaintiff entered his Houſe without his Leave, and there diſturbed him, and becauſe he would not go out, therefore *molliter, &c.* *Tottage* v. *Petty*, *H.* 10 *G.* 2. *B. R. H.* 358.]

And he muſt ſhew a Title to the Houſe or Cloſe, for it is not ſufficient to ſay that he was poſſeſſed. *R. Mo.* 846. *Semb. Lut.* 1497. *Vide ante*, (C. 39, 41. —E. 19, 21.) *Vide infra.*

To detain him *quod non exiret* a Tavern before he had paid his Reckoning. *Cl. Aſſ.* 100.

To reſtrain him from diſturbing a Parſon at a Funeral. *R.* 1 *Mod.* 168.

Quod Molliter Manus impoſuit to bring him before a Juſtice of Peace for cheating at Cards. *R.* 2 *Rol.* 546. *l.* 30.

To arreſt him upon a Juſtice of the Peace's Warrant. 2 *Rol.* 546. *A.*

So, if an Officer, or any one in his Aid, arreſts upon Proceſs of Law.

[A Battery cannot be juſtified by *Molliter Manus* on an Arreſt only, but Defendant muſt ſhew Reſtance, or an Attempt to reſcue. *Williams* v. *Jones*, *T.* 9 *G.* 2. *Str*, 1049. *B. R. H.* 298.]

If there was actual Force, he may uſe actual Force to remove, without a Requeſt to depart. *R. Sal.* 641.

Otherwiſe, where only Force in Law. *Semb. Sal.* 641.

If the Defendant pleads *molliter Manus* in Defence of his Poſſeſſion, he need not ſhew by what Title he was poſſeſſed; for it is only Inducement to the Plea. *R. Cro. Car.* 138. *R. cont. Mo.* 846. *Semb. cont. Lut.* 1497. *Vide Supra—Vide Ante*, (39, 41.—E. 19, 21.)

But a Man cannot plead that he threw Stones *molliter* againſt a Treſpaſſer to remove him, *&c.* *R.* 2 *Rol.* 548. *l.* 45.

Nor juſtify a Wounding by a *Molliter Manus*. *Semb.* 2 *Rol.* 548. *l.* 35. *Lut.* 1436, 1483. 1 *Rol.* 19.

And, if he concludes *Et ſic molliter Inſult' fecit*, for *Manus impoſuit*, it will be bad. *R.* 1 *Sid.* 441. 1 *Mod.* 36.

So

So a Defendant cannot juſtify *Man' Impoſition'*, becauſe the Plaintiff would have ſtruck his Horſe, *&c.* without ſaying that he aſſaulted or beat. *R. Lut.* 1483.

Or to remove him from his Land, without ſaying he was upon it. *R. Lut.* 1497.

Or, that he removed him from off a Horſe, which he had borrowed for two Days, becauſe he went out of his Way. *R.* 1 *Brownl.* 218. 2 *Cro.* 236.

So he cannot juſtify the Battery of a Servant, by which the Plaintiff loſt his Service, by *molliter Manus impoſuit*. *Lut.* 1497. *Vide Ante*, (3 M. 11.)

Replication. *To molliter Manus* the Plaintiff may reply, *De ſon tort Demeſne*. *Tho. Ent.* 422.

Or an outrageous Battery *Abſque hoc molliter, &c. Lut.* 1436. *Skin.* 387.

(3 M. 17.) Defence of his Poſſeſſion. So the Defendant may plead to an Action for Aſſault and Battery, that it was in Defence of his Houſe; for that is his Caſtle. 2 *Rol.* 548. *l.* 43. 2 *Bro. Ent.* 138.

So in Defence of his Poſſeſſion. 2 *Rol.* 548. *l.* 25. *Cont. per Twiſd.* 1 *Mod.* 36. *Vide Lut.* 1483.

In Defence of his Servant. 2 *Rol.* 546. *l.* 52.

In Defence of his Dog, Cattle, *&c. Ow.* 150. *Qu.* if it is not to be underſtood by *molliter Manus impoſuit*. *Vide Lut.* 1483.

But a Man cannot juſtify a Wounding in Defence of his Poſſeſſion. *R.* 2 *Rol.* 548. *l.* 35.

Nor a Battery for Diſturbance in Erection of a Booth. 2 *Rol.* 548. *l.* 40.

Nor for being in a Park in the Night, if he does not reſiſt or fly from the Keeper. *R.* 2 *Rol.* 548. *l.* 30.

Nor in Defence of his Maſter's Goods. *Per Powel Lut.* 1483.

(3 M. 18.) Amicable Conteſt. So the Defendant may plead that he wreſtled with the Plaintiff for a Wager.

(3 M. 19.) Due Correction. So the Defendant may plead that the Plaintiff was a Lunatick, *&c.* and he chaſtiſed him in order to bring him to ſound Mind. 2 *Rol.* 646. *l.* 25. 559. *l.* 50. *Pl. Com.* 18. *b.*

That the Plaintiff was his Scholar, and he corrected him.

Or his Servant, Son, or Wife, and he corrected. 21 *Ed.* 4. 6. *a.* 53. *a.*

But it is no Plea to Treſpaſs for a Battery that the Defendant was a Lunatick. 2 *Rol.* 547. *l.* 1.

(3 M. 20.) Inevitable Neceſſity. So the Defendant may plead, that he did it thro' inevitable Neceſſity againſt his Will: As, that at a Muſter he (being a Soldier) diſcharged his Muſket, and the Plaintiff ſuddenly croſt him, whereby he was inevitably ſtruck, againſt his Will. *R.* 2 *Rol.* 548. *l.* 10. *Mo.* 864. *Vide Poſt*, (3 M. 30.)

But the Plea is not good, if it does not appear to the Court that it was inevitable without the Defendant's Default or Negligence; As, if he ſays the Plaintiff caſually had the Gun diſcharged in his Face. *R.* 2 *Rol.* 548. *l.* 10. *Mo.* 864. *Ray.* 423.

That A. aſſaulted him, and in lifting up his Stick for his Defence he caſually ſtruck the Plaintiff. Ray. 423.

So in Treſpaſs for Aſſault and Battery, Plea, that the Horſe upon a Fright run againſt the Plaintiff, who, upon being called to, would not get out of the Way, is bad; for it does not anſwer the Battery. *R.* 4 *Mod.* 405.

So, Plea, that he ſhot an Arrow at Butts, and wounded the Plaintiff againſt his Will. 21 *H.* 7. 28. *a. Ray.* 423.

That he cut down his Hedge, and the Branches of the Trees, ipſo invito, *fell upon the Land of the Plaintiff. Ray.* 422.

Or fell into the River, whereby the Watercourſe to the Plaintiff's Mill was ſtopped. *Ray.* 423.

That in building his Houſe Timber ipſo invito *fell upon the Houſe of another. Ray.* 423.

So, to Treſpaſs *per quod Conſortium*, or *Servitium amiſit*, the Defendant may plead *Not guilty*. (3 M. 21.) To an Aſſault *per quod Conſortium, &c. amiſit.*

So he may ſay, that the Wife or Servant made the firſt Aſſault; for if he juſtifies the Battery, it will be an Anſwer to the Loſs of Service, *&c.* which is conſequential. *Per* 2 *J.* 1 *Rol.* 393. *Tho. Ent.* 390.

To Treſpaſs for falſe Impriſonment, the Defendant may plead that he did it *Virtute Officii:* As, that he, being Conſtable, ſaw the Plaintiff break the Peace, and therefore he put him in the Stocks. *Cl. Aſſ.* 99. (3 M. 22.) To falſe Impriſonment. By his own Authority, as an Officer, *&c.*

That, being Conſtable, he put the Plaintiff in the Stocks for making *Hue* and *Cry* without Cauſe. *Bro. V. M.* 479.

For keeping a Houſe of bad Fame. *Bro. V. M.* 479.

But now by the *St.* 7 *Ja.* 5. a Conſtable for any Thing done by Virtue of his Office, may plead, *Not guilty*.

So the Defendant may plead, that he, being Governor of the Plantations, committed, till he was brought to the Court of *Oyer and Terminer*. *Ca. Parl.* 25.

So the Defendant may plead that he did it to prevent apparent Miſchief, which might enſue: As, to reſtrain the Plaintiff, *Non ſane*, from killing himſelf, or others, burning a Houſe, or other Miſchief. 2 *Rol.* 559. *l.* 35. *Vide Ante*, (3 M. 19.)

That the Plaintiff and another were fighting, and he reſtrained him from fighting, till the Rage was over. 2 *Rol.* 559. *l.* 40.

That the Plaintiff was a Cheat, and played with falſe Dice, and the Defendant took him to carry him before a Juſtice of Peace. *Jon.* 249.

That the Plaintiff would have left a Child in the Pariſh, and he took him before a Juſtice. 1 *Leo.* 327.

But it is no Plea, that he apprehended and detained him till he conſented to remove a Miſdemeanor, Nuſance, *&c.* *R.* 1 *Leo.* 327.

The Defendant cannot juſtify a Reſtraint (becauſe they threatned to fight) to prevent it. 2 *Rol.* 559. *l.* 45.

Or by Preſcription to impriſon for a Day or two at Diſcretion, if any one *contemptuoſe ſe geſſerit* towards Bailiffs of the Corporation, *&c.* *R.* 2 *Leo.* 34.

That he, being Conſtable, took away Salmon taken contrary to the St. 1 *El.* 17. is not good, without the Warrant of a Juſtice of Peace. *R.* 1 *Sal.* 407.

But by the *St.* 7 *Ja.* 5. In an Action againſt a Juſtice of the Peace, Mayor, Bailiff, Conſtable, *&c.* for any Thing done by Virtue of their Offices, or againſt any others in Aid, or by Command of ſuch Officers (which Act is made perpetual by the *St.* 21 *Ja.* 12.) The Defendant now may plead *Not guilty*, and give the ſpecial Matter in Evidence. (3 M. 6.) By Warrant of a Juſtice of Peace. *Vide Ante.* (3 K. 26.)

And therefore, if a Man ſeiſes a Gun, *&c.* of a Perſon, not qualified, by a Juſtice's Warrant, he may plead *Not guilty*. *Lut.* 1506.

So, if the Defendant juſtifies, as Judge or Officer, he muſt ſhew his Authority. *Ca. Parl.* 29.

And that the Matter was within his Conuſance or Juriſdiction. *Ibid.*

So, if the Defendant juſtifies an Arreſt by Command of a Juſtice, or Mayor, he muſt ſhew in Certain for what Cauſe it was. *R.* 2 *Cro.* 81.

If he juſtifies by Command of a Dean and Chapter, he muſt ſhew a Precept, or Warrant. *R. Carth.* 74.

So the Defendant may plead that he did it by *Meſne* or Judicial Proceſs out of the King's Court: As, upon a *Ca. Sa.* after Judgment in *B. R.* or *C. B.* 2 *Bro. Ent.* 284. 2 *Vent.* 190. (3 M. 24.) By Proceſs.

[A *Ca. Sa.* on a Judgement afterwards ſet aſide for Irregularity, is no Juſtification to the Plaintiff; but, on an erroneous Judgment, it is. *Philips* v. *Biron, H.* 8 *G. Str.* 509.]

Or upon a *Fieri facias* or *Ca. Sa.* after Judgment in an Inferior Court. *Lev. Ent.* 176, 206.

Or upon *Meſne* Proceſs out of *B. R.* or *C. B.* 3 *Lev.* 62. *Tho. Ent.* 315, 344. 1 *Bro. Ent.* 219.

Or an Attachment of Privilege.

Or by *Homine Replegiando*. *Lut.* 1430.

Attachment, *&c.* out of *Chancery*. *Lev. Ent.* 191.

Or upon Proceſs from a County *Palatine*.

Or out of an Inferior Court of Record. *Tho. Ent.* 342.

Or out of the Court of *Admiralty*. 2 *Lev.* 131.

Or of a County or Hundred Court, *&c.* *Lev. Ent.* 212. *Lut.* 1440.

Or by the Command of the *Chief Juſtice* to deliver him to the *Marſhal* according to Cuſtom. 2 *Rol.* 558. *l.* 35.

If the Defendant juſtifies by a Judicial Proceſs out of a Superior Court, it is ſufficient to alledge the Judgment, Writ of *Ca. Sa.* and Warrant thereon to the Officer.

And the Officer himſelf need not alledge the Judgment, only the Writ and Warrant. *R.* 3 *Lev.* 20. 1 *Sal.* 409.

So, if by *Meſne* Proceſs out of a Superior Court, it is ſufficient to alledge the Writ to the Sheriff and Warrant upon it.

So, it is ſufficient to ſhew a Writ to the Sheriff, and a Warrant to the Defendant before the Arreſt, tho' there was not an actual Delivery of the Writ to the Sheriff before the Arreſt, if the Defendant had not Notice of the Non-Delivery. *R.* 3 *Lev.* 93. *Dub. Mod. Ca.* 70. *R.* 2 *Lev.* 19.

[If the Officer joins in the ſame Plea with Defendant, for whom the Warrant is no Juſtification, he forfeits the Benefit of it. *Philips* v. *Biron*, *H.* 8 *G. Str.* 509. *Smith* v. *Dr. Bouchier*, *M.* 8 *G.* 2. *Str.* 993.]

[If Plaintiff in an Action in an inferior Court, and Officer, jointly juſtify under a Proceſs returnable at next Court, they muſt ſhew a Return made; or Officer Treſpaſſer *ab Initio*, and Plaintiff by joining in Plea is equally affected. *Middleton* v. *Price*, *P.* 16 *G.* 2. *Str.* 1184. 1 *Wilſ.* 17.]

[In Caſe, againſt an Officer for falſe Impriſonment on 12 *G.* if he pleads Proceſs of an inferior Court, it is an Excuſe good enough for him. *R. Rycraft* v. *Calcraft*. *Fort.* 344.]

But, if the Juſtification is by *Meſne* or Judicial Proceſs out of an inferior Court, he muſt ſhew all the Proceedings at Large, regularly. *Vide Ante*, (E. 18.)

And therefore, if a good Authority does not appear for holding the Court, it is bad. *Lut.* 918. *R.* 3 *Lev.* 141, 243. *Lut.* 1464, 1457. 2 *Jon.* 165.

If he ſhews an Authority by Patent and Preſcription, it is not good. *Semb. Mod. Ca.* 70.

[In Treſpaſs for taking Goods, if Defendant juſtifies for that *according to Cuſtom* of City, he levied a Plaint, *&c.* it is good; tho' he does not ſay the Court was held according to Cuſtom, tho' it is of Horſes or Geldings, tho' he does not aver they were taken within the Juriſdiction, (if it appears they were,) tho' he mentions only one Sheriff of *London*. *Williams* v. *Jones*, *T.* 9 *G.* 2. *B. R. H.* 298.]

So, if a Plaint was alledged, upon which *taliter proceſſum fuit* that Judgment, *&c.* it was not ſufficient antiently. *Lut.* 918. but now it is ſufficient. *Semb.* 3 *Lev.* 243. *R.* 3 *Lev.* 404. *Lut.* 1413, 1414. *Vide Ante*, (E. 18.)

[If Defendant juſtifies under a *Capias* out of a baſe Court, in Action of Debt, and ſhews that a Plaint was levied, *et taliter proceſſum fuit*, that a *Capias* iſſued; it is well, without ſhewing that a Summons iſſued before the *Capias*. *Adams* v. *Freeman*, *P.* 26 *G.* 2. 2 *Wilſ.* 5.]

So, if it does not appear that the Cauſe of Action aroſe within the Juriſdiction of the Inferior Court, it is bad. 3 *Lev.* 243. *R. cont. in Ex. M.* 2 *Geo.*

And therefore it muſt be alledged at what Place it aroſe. *Semb. Lut.* 1413.

And tho' the Plaint there mentions it to be *infra Juriſdictionem*, it is not ſufficient. *R.* 3 *Lev.* 243, 4. *Cont. Lut.* 937.

So, if it does not appear that the Plaint was levied, or the Defendant impleaded there. 3 *Lev.* 404.

Or before whom the Plaint was levied. *R. Lut.* 1526.

Or in what County the Court was. *Ibid.*

Or out of what Court the Proceſs iſſued. *Lut.* 1460. *R. Sal.* 517.

If he juſtifies Treſpaſs till he paid 11*l.* 10*s.* by Proceſs of Execution for 11*l.* only. *R.* 2 *Mod.* 177.

So, if he alledges a Mandate by the Court to *B.* to carry to the Compter, *B.* muſt ſhew that he was detained there; for that he took and detained him generally is not ſufficient. *R.* 1 *Sal.* 408.

If he alledges an Attachment out of an Inferior Court, this does not juſtify the carrying away Goods. *Mod. Ca.* 71.

Yet, if the Defendant juſtifies by Proceſs out of the *Admiralty*, which recites it to be in a Maritime Cauſe, the Defendant need not aver that the Cauſe aroſe *ſuper altum Mare*. *R.* 2 *Lev.* 131.

If he juſtifies by Proceſs of a Court Leet, he need not ſhew that it was held by Grant or Preſcription. *R.* 1 *Sal.* 200.

So, if the Defendant pleads a Judgment in *B. R.* he muſt ſhew where *B. R.* then was, for that Court is removeable. *R. Cro. El.* 504.

So, if the Defendant juſtifies by a Sheriff's Warrant, he muſt ſhew his Warrant ſpecially. *R.* 4 *Mod.* 378. *Vide Ante*, (E. 17.)

He muſt ſhew that the Warrant was directed to the Defendant, for to *D.* without ſaying the aforeſaid *D.* is not ſufficient. *Semb. Lut.* 1465.

[If a Warrant on a *Capias* has two Bailiffs Names inſerted by the Under-Sheriff, and a Blank left for a third, is ſealed, and ſent to Plaintiff's Attorney, who inſerts another Bailiff's Name in the Blank, it is a bad Warrant, and no Juſtification of the third Bailiff who arreſts. *Burſlem* v. *Fern*, *H.* 30 *G.* 2. 2 *Wilſ.* 47.]

That he is an Officer, to whom the Warrant ought to be directed. *R. Lut.* 1464.

If he alledges a Sheriff's Mandate to a Bailiff of a Franchiſe, he muſt ſay it was ſealed. 2 *Vent.* 193.

If the Sheriff or Officer himſelf, to whom Proceſs is directed, juſtifies Impriſonment by Force of ſuch Proceſs, he muſt ſhew the Writ to be returned. 2 *Rol.* 563. *l.* 10, 20. *R.* 1 *Sal.* 409. *R.* 16 *H.* 7. 14. 21 *H.* 7. 22.

So, if he juſtifies by *Fieri facias*, *Pluries Replevin*, or other Proceſs returnable. *R.* 1 *Sal.* 410.

But the Bailiff of a Franchiſe need not. 2 *Rol.* 563. *l.* 25.

Nor a Bailiff who has a Warrant from a Sheriff, or the Party, or any other, who acts in Aid of him. *R.* 2 *Rol.* 562. *l.* 45, 50. *Cont.* 2 *Rol.* 563. *l.* 30, 40. *R. acc. Cro. Car.* 446. *Jon.* 378. *R. in C. B. M.* 10 *An. R.* 1 *Sal.* 409.

So the Sheriff, or principal Officer, need not in *Replevin*, or *Alias*; for they are not returnable. *R.* 1 *Sal.* 210.

Nor where he pleads that the Defendant was reſcued, whereby he could not make a Return. *R. in Exch. M.* 2 *Geo.* 2.

But an Officer cannot juſtify taking upon a *Habeas Corpus*, after a *Cepi* returned, where the Party is let to Bail; but he ought to aid himſelf upon the Bail. *R.* 2 *Rol.* 558. *l.* 25.

So he cannot juſtify by an Order of *Chancery*, but it muſt be by Attachment. *R.* 1 *Mod.* 272.

[If Defendant pleads an Outlawry and Warrant, he muſt aver that the *Cap. Utlagat.* was filed and remained of Record, and he muſt ſay *prout patet per Record*. *R.* on Demurrer in *C. B.* and affirmed on Error in *B. R. Carvil* v. *Manly*, *M.* 9 *G. Fort.* 379.]

(3 M. 25.) To Treſpaſs for Cattle or Goods. Diſtreſs for Rent, &c.

To Treſpaſs for taking Cattle, or other Goods, the Defendant may plead that he took them as a Diſtreſs for Rent and Services. *Vide Ante*, (3 K. 15.)

Or for a Rent-Charge. *Vide Ante*, (3 K. 18.)

Or for Rent reſerved upon a Leaſe for Life or Years. *Vide Ante*, (3 K. 19.)

Or for Relief, Amerciament, &c. *Vide Ante*, (3 K. 17.)—(3 K. 27, 28.)

Or for Toll. *Lut.* 1520.

[For

[For Toll; without saying how much the Toll was, *Morgan* v. *Skinner*, T. 1722. *Bunb.* 114.]

For Toll or Stallage in a Fair or Market. *Lut.* 1517, 1499.

So he may juſtify as an Officer by the *St.* 1 *Ja.* 22. for ſearching and ſeiſing Leather not tanned. *Lut.* 181, 1403.

As a Gamekeeper, for ſeiſing the Gun, *&c.* of a Perſon not qualified. *Lut.* 1505.

For Seiſing a Heriot, *&c.* due by Cuſtom. *Lut.* 1310. *Win. Ent.* 62. *Vide Ante*, (3 K. 28.)

Where the Land is Copyhold.

Or due by Tenure, or reſerved upon a Demiſe.

If the Defendant juſtifies as Servant or Bailiff to another, when he is not ſo, the Plaintiff may reply *de ſon Tort*, *&c.* *Cro. El.* 14.

(3 M. 26.) *Damage feaſant.* *Vide Ante*, (3 K. 21.)

So the Defendant may plead, that the Place where, *&c.* was his Freehold, and he took *Damage feaſant*.

That it was the Freehold of *B.* and he took as his Servant the Cattle, *&c.* *Damage feaſant*.

That *B.* was ſeiſed and demiſed to him for Years, who took *Damage feaſant*. *Lev. Ent.* 209.

That the Plaintiff uſed Nets to fiſh in his ſeveral Fiſhery, for which he took them *Damage feaſant*. *Cro. Car.* 228.

[In Treſpaſs for impounding Cattle, and *keeping them ſo cloſe that one died*, Not guilty, and Juſtification for *Damage feaſant*; Verdict for Plaintiff on firſt; for Defendant on ſecond; there ſhall be Judgment for Defendant; for the Juſtification covers the Whole; the Death of the Beaſt being only *Gravamen*, and need not be anſwered. Plaintiff might have had *Caſe* for the Death. *Gates* v. *Bayley*, T. 6 G. 3. 2 *Wilſ.* 313.]

The Defendant muſt ſhew by what Title he was ſeiſed, or poſſeſſed; for it is not ſufficient to ſay, that he was poſſeſſed, or that it was his Cloſe, without more. *R. upon ſpecial Demurrer*, 4 *Mod.* 419. *R. Lut.* 1492. *R. Cont.* 2 *Mod.* 70. 3 *Mod.* 132. if it is not Treſpaſs *quare Clauſum fregit*: *But theſe Caſes are denied. Lut.* 1492. *R. Carth.* 10. *Vide Ante*, (G. 41.)

But the Defendant cannot juſtify deſtroying the Goods, *&c.* found *Damage feaſant*.

Nor the cutting Nets or Oars to prevent Fiſhing in his Fiſhery. *R. Cro. Car.* 228.

Nor chaſing of Ewes whereby *deteriorat' fuerunt*. *R.* 3 *Leo.* 15.

Nor cutting the Wood of a Seat erected in a Church without Licence, *&c.* tho' removed by the *Church Wardens*. *R. Noy* 108.

[In Treſpaſs for breaking and entering a Houſe, and taking away Goods, and converting them to his own Uſe; if Defendant pleads, that he took them *Damage feaſant*, and removed them to the Pound, and left them for Plaintiff's Uſe, it is bad; for it is no Anſwer to the Converſion to his own Uſe. *Wright* v. *Penn*, *M.* 4 *G.* 2 *Fort.* 381.]

[It is a good Replication, that after the taking *Damage feaſant* Defendant converted the Beaſt to his own Uſe. *Dye* v. *Leatherdale*, *M.* 10 *G.* 3. 3 *Wilſ.* 20.]

So the Plaintiff to a Taking *Damage feaſant*, may ſay that the Taking was in another Place. *R.* 2 *Cro.* 141.

(3 M. 27.) For Prevention of Damage.

So the Defendant may plead, that he took to avoid Damage otherwiſe inevitable: As, that he took out of the Houſe to preſerve from Fire. *Semb.* 21 *H.* 7. 27. *b.* *Vide Treſpaſs*, (D.)

That he chaſed Cattle *Damage feaſant* with a Dog. *R.* 4 *Co.* 38. 2 *Rol.* 566. *l.* 20. *R. Jon.* 131. *Poph.* 162. *Vide Poſt*, (3 M. 38.)

That he removed Iron, *&c.* which the Plaintiff had broke down his Fences, *&c.* with and left upon his Land, to the Land of the Plaintiff, and gave him Notice thereof; for he need not take it *Damage feaſant* and impound it. *R.* 2 *Rol.* 566. *l.* 35.

But

But it is no Plea, that he took for the Safety of his Goods, where the Owner may have Remedy if they are deſtroyed: As, that he took Corn, ſevered for Tithes, and carried them to the Barn of the Plaintiff, the Parſon, to ſave them from the Cattle going in the ſame Cloſe. *R.* 21 *H.* 7. 27. *b.*

That he took the Plaintiff's Horſe going in the Field for Fear it ſhould be ſtolen. 21 *H.* 7, 27. *b.*

(3 M. 28.) Default of the Plaintiff himſelf.

So the Defendant may juſtify for the Plaintiff's own Default: As, if the Plaintiff puts his Grain or Money with thoſe of the Defendant, he may juſtify taking the Whole. *R.* 2 *Rol.* 566. *l.* 15. 2 *Bul.* 323. 2 *Cro.* 366.

Or, if the Plaintiff takes a Handful of Grain from the Defendant and mixes with his own, the Defendant may take a Handful of his. 2 *Rol.* 566. *l.* 12.

So, if before Execution againſt *A.* he puts the Goods of *B.* amongſt his by *Covin*, that an Action may be brought for the Taking by *B. Per Ley C. J.* 2 *Rol.* 393.

(3 M. 29.) Defect of Fences.

So the Defendant may plead that the Defendant by Preſcription ought to repair the Fences between the Cloſes of the Plaintiff and Defendant, and for Want of Repair, his Cattle eſcaped and did the Damage alledged. 19 *H.* 8. 6. *a.* 2 *Rol.* 565. *l.* 30. *Tho. Ent.* 304.

That the Plaintiff ought to repair the Fences between his Cloſe and the Highway, and for Want thereof his Cattle eſcaped out of the Highway. 10 *Ed.* 4. 7. *b.*

Or, between his Cloſe and the Place, where the Defendant has Common. *Win.* 996. or 1110. Edit. 1680. *Lut.* 1357.

That the Plaintiff, or a Stranger by his Command, threw down the Fences, whereby the Cattle eſcaped.

And it is ſufficient for the Defendant to ſay that he is poſſeſſed of a Cloſe adjoining to the Plaintiff's Cloſe, without ſaying by what Title, or for what Term. *R. Yel.* 74.

That all Occupiers ought to repair. *Semb.* 1 *Sal.* 357. 1 *Vent.* 97. *Ray.* 192.

So the Defendant may juſtify entring to rechaſe Cattle that eſcaped for Want of Fences. 2 *Rol.* 565. *l.* 35, 40.

But it is not ſufficient to ſay the Plaintiff *reparare debet*, without ſhewing by what Title, to wit, by Preſcription, or otherwiſe. *R. Yel.* 75.

That by Agreement the Plaintiff ought to repair; for he may have a Remedy upon his Covenant. *Per* 3 *J. Cro. El.* 709.

So, it is no Plea, if he ſuffers his Cattle to continue there after Notice, tho' the Fences are not in Repair. *Semb.* 2 *Leo.* 93.

Or if his Cattle eſcape out of the Highway into his Land, becauſe there is no Fence; if he is not bound to maintain it. 2 *Rol.* 565. *l.* 47.

So he cannot alledge a Cuſtom to repair, but muſt preſcribe that ſuch an One ought. 1 *Vent.* 97.

So, it is no Plea, that a Foreſter, *&c.* entred to rechaſe Deer, *&c.* that eſcaped by the Plaintiff's Neglect in maintaining the Fence, *&c.* for when it is out of the Foreſt, Park, *&c.* the Property is gone. *R. Kelw.* 30. *Manw.* 106.

Replication.

To this Plea the Plaintiff may reply *de ſon Tort*, and traverſe the Preſcription. *Raſt.* 621. *b.*

Or *de ſon Tort*, and traverſe the Want of Repair. *Win.* 999. (or 1113. Edit. 1680.)

Or *de ſon Tort*, and traverſe the Eſcape *Modo & Forma*. *R. Lut.* 1358, 9.

Or *de ſon Tort demeſne* generally. *Raſt* 621. *a.*

So, that the Fences were ſufficient, but the Defendant's Cattle threw down all the Fences. *Raſt*, 621. *a.*

(3 M. 30.) Neceſſity.

So the Defendant may juſtify for unavoidable Neceſſity: As, that he threw Goods (being in a common Barge upon the *Thames*) into the Water, in a Tempeſt, to ſave the Paſſengers Lives. *R.* 2 *Rol.* 567. *l.* 5. *R.* 12 *Co.* 63.

That he pulled down the Houſe to extinguiſh the Fire. 12 *Co.* 63 *Vide Ante* 3 *M.* 20.)

(3 M. 31.) Involuntary Accident.

So the Defendant may plead, that it was not in his Power to prevent it; As, that the Cattle going in the Road by the Plaintiff's Cloſe *raptim & ſparſim* againſt his Will depaſtured the Plaintiff's Graſs or Corn. 2 *Rol.* 566. *l. ult.*

That he chaſed Sheep mixt with his own to a Place where he might ſeparate them. *Per Rede*, 21 *H.* 7. 28. *a. Lat.* 13.

That the Executor took Goods mixt with the Teſtator's Goods 'till he had Knowledge of the Miſtake. 21 *H.* 7. 28. *a.*

So the Defendant may plead, that his Dog chaſed the Plaintiffs Sheep out of his Land, and purſued them againſt his Will into the Plaintiff's Land. *R. Lut.* 13, 119.

That a Horſe, being unruly, violently carried the Plough into the Plaintiff's Land adjoining. *Lat.* 13.

That Trees were blown down by the Wind into the Plaintiff's Land, and he entred to remove them. *Lat.* 13.

That driving Sheep in the Highway, they againſt his Will eſcaped into the Plaintiff's Land. *Lat.* 13.

That Fruit fell from his Trees into another's Land adjoining, and he picked it up. *Lat.* 120.

But it is no Plea, if the Accident was by a voluntary Act, or Neglect of the Defendant; As, if a Man lets a Falcon go at a Pheaſant in his own Land, and purſues it into the Land of another, Treſpaſs lies. *Lat.* 13.

If he cuts down a Tree, which falls into another's Land, and he enters to remove it. *Lat.* 13.

(3 M. 32.) To Treſpaſs *pro bonis cum Uxore abductis.*

To Treſpaſs for taking Goods, *cum Uxor'* the Defendant may plead that ſhe was the Wife of the Defendant. 2 *Rol.* 551. *l.* 10.

That he took her by Leave of her Huſband. *R.* 1 *Ed.* 4. 1. *a.*

But the Defendant cannot plead *Ne unques accouple.* 2 *Rol.* 551. *l.* 5.

(3 M. 33.) To Treſpaſs for killing a Dog, *&c.*

So to Treſpaſs for killing his Dog, the Defendant may plead that the Dog chaſed the Conies in his Warren, *&c.* *R.* 2 *Cro.* 44. *Agreed* 1 *Sid.* 336. *Cont.* 2 *Rol.* 567. *l.* 35.

Or that he killed the Deer in his Park. 3 *Lev.* 28, 35.

And, he need not ſay that the Plaintiff knew of the Quality of the Dog to haunt the Warren, *&c.* 2 *Cro.* 45.

Or that there was a Neceſſity to kill it. 1 *Sid.* 336. 3 *Lev.* 28.

So the Defendant may plead that the Plaintiff's Maſtiff came into the Defendant's Court, to the Terror of his Family, and therefore he killed it. *R. Lut.* 1494.

Or faſtned upon his Dog, and he could not otherwiſe part them. *Adm.* 1 *Sand.* 84.

But, if the Defendant pleads, that the Plaintiff's Dog faſtned upon the Defendant's Dog, for which he killed it, he muſt ſhew that he could not otherwiſe part them. *R.* 1 *Sid.* 336. 1 *Sand.* 84.

So, it is no Plea, that the Dog chaſed a Hare into his Land, and therefore he killed, or took it. *R.* 2 *Cro.* 463.

So, if the Plaintiff replies, that he chaſed Conies, Deer, *&c.* in his own Land, and the Dog purſued into the Park, *&c.* he muſt ſay he endeavoured to reſtrain him from going into the Park, *&c.* *R.* 3 *Lev.* 28.

So, if Treſpaſs be for taking a Dog with a Collar, it is no Bar to ſay, he was courſing a Hare in his Soil, and he took him, and led him away. *R.* 2 *Cro.* 463.

(3 M. 34.) To Treſpaſs *quare Clauſum fregit*, The Common Bar.

To Treſpaſs *quare Clauſum aut Domum fregit, &c.* the Defendant may plead the Common Bar, *viz.* That the Cloſe or Houſe in the Declaration was the Defendant's own Freehold. *Win. Ent.* 961. (or 1077. Edit. 1680.) 14 *H.* 8. 24. *b.*

If

If the Defendant pleads the Common Bar, he muſt name the Lands, which are his Freehold, otherwiſe, if the Plaintiff has Lands in the ſame Place, as well as the Defendant, the Treſpaſs cannot be proved in the Defendant's Land, for it ſhall be intended in the Plaintiff's Land, and he ſhall not be put to a new Aſſignment till the Defendant aſcertains another Place by Name. *R. Dy.* 23. *b.*

Yet if Treſpaſs is *quare Clauſum* in *D.* &c. it is ſufficient for the Defendant to prove he has a Freehold in *D.* *Sal.* 453.

If it is *quare Clauſum vocat' A.* in *D.* he muſt prove Title in a Cloſe of the ſame Name. *R. Sal.* 453.

If upon the Common Bar there is a new Aſſignment, where it is not neceſſary, it will be good by the Statute of *Jeofaile* after Verdict. *R.* 1 *Brownl.* 200.

So a new Aſſignment may be made, tho' the Defendant juſtifies in the former Place. *R. Sal.* 453.

To Freehold pleaded, the Plaintiff may ſay that before the Defendant had any Thing, *A.* being ſeiſed, leaſed to him. *Jon.* 352.

But, if to a Common Bar, the Plaintiff replies, that the Place is ſuch, the Defendant cannot rejoin that it is the ſame Place as in the Bar; for the Replication ſays *al'* than in Bar, and therefore the Plaintiff will be eſtopped to give Evidence of a Treſpaſs there. *R. Cro. El.* 492.

So, if Treſpaſs be for Goods taken in *D.* the Defendant cannot plead the Common Bar, for *D.* is named only for a *Venue*. *R. upon general Demurrer*. *Sal.* 453. *Mod. Ca.* 117. *Carth.* 176.

If the Defendant agrees in the Name of the Place, and varies in Quantity, or other Deſcription, the Plaintiff cannot aſſign a different Quantity to the Place where, &c. but muſt ſay there are two Places of ſuch Name, &c. and that the Treſpaſs was in This. *R. Yel.* 166. *Cro. El.* 897.

If the Defendant names a Place, which contains the Land in the Declaration and more, the Plaintiff ſhall ſay that the Treſpaſs was in ſuch Land without anſwering to the other Quantity. *R.* 27 *H.* 8. 22.

If the Declaration is, in a Market in *B.* if the Defendant juſtifies in *B.* it is ſufficient, tho' he does not anſwer to the Market; for if the Place makes the Juſtification bad, the Plaintiff muſt ſhew it. *R.* 2 *Jon.* 207.

If the Common Bar is pleaded, the Plaintiff may reply that it is his Freehold, and join Iſſue upon it. *Aſt. Ent.* 504. for *per* 2 *J. Hought. cont.* 2 *Cro.* 594. he cannot traverſe that it is the Defendant's Freehold. *So by Levinz, Lut.* 1419, 1401. 27 *H.* 8. 22. *b.*

Or may make a new Aſſignment of the Place, where the Treſpaſs was done. 2 *Cro.* 594.

If the Writ is general, and the Declaration for *Unâ Rodâ Terræ*, by a new Aſſignment he may ſay an Acre. *Win. Rep.* 65.

If the Declaration is *quare Clauſum fregit* a new Aſſignment in a Barn, &c. is bad. 4 *Leo.* 16.

But *quare Domum fregit* is ſufficient for a Barn, &c. 4 *Leo.* 16. 2 *Leo.* 185.

The new Aſſignment muſt aſcertain the Place, and therefore two Acres of Land, *ſive Prati*, is bad. *R. Dy.* 264. *a.* *Bendl. pl.* 222. 1 *And.* 31.

So, if it does not give a Name to the Place, or the Abuttals, it is bad. *Semb. Dy.* 264. *a.*

And if it gives the Abuttals, they muſt be proved. *Semb. Dy.* 161. *b.*

To a new Aſſignment the Defendant may plead, *Not guilty*, or juſtify. 14 *H.* 8. 4. *a.*

And may juſtify for another Cauſe than his Bar. *R. Mo.* 540.

To the new Aſſignment the Defendant muſt plead, *Not guilty*, or juſtify, for he cannot ſay that the Place aſſigned and the Place in Bar are the ſame. *R. Dy.* 161. *b. in Marg.* *R. Mo.* 463.

So to *Clauſum fregit*, the Defendant may plead, Entry by the Plaintiff's Licence. *Win. Ent.* 1099. (3 M. 35.) Licence.

And

And Licence at a Day before is ſufficient, without ſaying it continued; for it ſhall be intended, if the Contrary does not appear. *Semb. Cart.* 218.

So Licence by the Plaintiff may be given in Evidence upon *Not guilty*. *Per Rede* 21 *H.* 7. 28. *a.*

So he may plead Licence by the Bailiff of the Owner, and it will be aided after Verdict. *R.* 2 *Cro.* 377.

So an implied Licence; As Entry *ad Auxilium in Puerperio ferend.*

Continuance after the Death of Leſſee for Life for ſix Days, before which Time he could not remove. *R.* 2 *Cro.* 204.

So, if *A.* licenſes *B.* to put Trees, *&c.* in his Garden, and afterwards ſells the Garden to *D.* who continues them there without Seiſure. *Mod. Ca.* 171.

Or Licence by Law; As, that *Domus fuit Communis Taberna*. *Win. Ent.* 1087, 1088, 1097.

That he entred to ſhew the Sheriff the Cattle upon Replevin. 2 *Rol.* 553. *l.* 12. *Vide Poſt*, (3 M. 39.)

To view Waſt.

But Entry by Licence of the Plaintiff's Wife, or Servant, is not ſufficient. *R. Cro. El.* 876.

Nor Entry to take his Goods, or his Falcon that purſued a Pheaſant there. *R.* 2 *Rol.* 567. *l.* 30. *Vide Poſt*, (3 M. 39.)

Nor Entry to viſit his ſick Daughter, being Servant to the Plaintiff. *R.* 2 *Rol.* 567. *l.* 20.

Or to demand his Debt, if he does not ſay that the Owner was then there, *R. Cro. El.* 876.

So the Licence will be determined by Sale of the Land wherein it was given. *Per Holt*, *Mod. Ca.* 171.

(3 M. 36.) Tender of Amends.

So, to an involuntary Treſpaſs, the Defendant may plead a Tender or ſufficient Amends. 1 *Bro. Ent.* 332. *Tho. Ent.* 304.

And by the *St.* 21 *Ja.* 16. To Treſpaſs *quare Clauſum fregit* the Defendant, diſclaiming Title to the Land, and ſhewing it to be an involuntary Treſpaſs, may plead Tender at any Time before Action brought.

So to a neglient Treſpaſs by Eſcape of Cattle, *&c.* 2 *Rol.* 570. *l.* 20.

But Tender after Action brought is too late.

So after a *Latitat* ſued out; for the Plaintiff may by his Replication aver that he ſued out a *Latitat* with Intent to declare in Treſpaſs. *R. Cro. Car.* 264. 1 *Rol.* 538. *l.* 3.

So to Avowry for *Damage feaſant* in Replevin, Tender muſt be pleaded before impounding, for it is not within the *St.* 21 *Ja.* 16. which goes only to Treſpaſs. 3 *R. Lut.* 1596.

So Tender muſt be of a Sum certain; for he is a Wrong-Doer. *Sal.* 686.

So to a voluntary Treſpaſs, Tender before Action brought is no Plea: As, for putting Cattle in his Cloſe. *R.* 2 *Rol.* 570. *l.* 25. *Noy.* 12.

Or for breaking his Hedges, *&c.* 2 *Rol.* 570. *l.* 25.

So to Treſpaſs by Miſtake Tender before Action is no Plea; for, if the Act was voluntary, it cannot be known whether it was by Miſtake, or how intended: As, that he cut down the Plaintiff's Hay by Miſtake for his own. *R.* 3 *Lev.* 37.

[It cannot be pleaded in Treſpaſs for taking Goods. *Bailee* v. *Vivaſh*, *P.* 9 *G. Str.* 549.]

To Tender of Amends the Plaintiff may reply *Quod non obtulit*. *Tho. Ent.* 304.

Or that the Amends were not ſufficient.

(3M. 37.) Publick Good.

So the Defendant may juſtify a private Treſpaſs for the publick Good: As, entring the Plaintiff's Cloſe to make a Bulwark in Defence of the King and Kingdom. 21 *H.* 7. 27. *b.*

Pulling down a Houſe to ſave others from Fire. 21 *H.* 7. 27. *b.* 2 *Rol.* 566. *l.* 2.

To remove a Nuſance. *Sal.* 458.

So an Entry upon freſh Suit of a Felon, or Goods ſtolen. 2 *Rol.* 564. *l.* 42.

Or to make a Diſtreſs. 2 *Rol.* 566. *l.* 10.

In ſuch Caſe, he need not ſay he did as little Damage as poſſible, *R. Sal.* 458, 9.

But he cannot juſtify entring a Cloſe, or digging up the Soil to hunt or take a Fox, Badger, *&c* tho' it be for the publick Good. *R.* 2 *Rol.* 558. *l.* 10. *D. cont. Lat.* 120. *R. Acc.* 2 *Bul.* 60.

Nor Entry to take his Goods, which a Treſpaſſer carried to *B.*'s Houſe. *R.* 2 *Rol.* 564. *l.* 35. *D. Mo.* 20.

Or to ſearch for his Goods ſtolen, in another's Land. *R.* 2 *Rol.* 565. *l.* 15. 1 *Brownl.* 199.

(3 M. 38.) **Prevention of Damage to himſelf.**

So he may juſtify for Removal of a Treſpaſs from himſelf, tho' Damage thereby happens to another: As, if *A.* erects a Dam, Wall, *&c.* upon his Soil and the Soil of *B.* if *B.* throws down the Wall upon his Soil, it will be well, tho' thereby the whole Wall, *&c.* upon the Soil of *A.* alſo falls. *R. Cro. El.* 269.

So he may enter the Land of another to remove a Nuſance there to himſelf. 2 *Rol.* 565. *l.* 50.

He may break a Houſe, where he is wrongfully impriſoned, to make his Eſcape. 2 *Rol.* 566. *l.* 5. *Vide Execution*, (C. 5.)

He may chaſe Cattle *Damage feaſant* with a Dog to remove them. 2 *Rol.* 566. *l.* 20.

But it is no Plea that he took the Plaintiff's Horſe to fly from the Aſſault of *B.* and others. *Ray.* 423.

(3 M. 39.) **Uſing or ſecuring his Property.**

So the Defendant may juſtify an Act for the Security of his Eſtate, or Intereſt: As, if he has a Fiſhery in another's Soil, he may juſtify putting Pales, or other Things there. 2 *Rol.* 564. *l.* 27.

If *A.* takes *B.*'s Goods, *B* may juſtify the Taking, tho' there is an Alteration of the Form: As, if Timber taken is cut into Boards. *R. Mo.* 19.

If Cloth is made into Cloaths. *Mo.* 20.

So, if a Man has Goods, Timber, *&c.* in a Houſe or upon the Land of another, his Executor may juſtify the Taking. 2 *Rol.* 564. *l.* 25.

If a Treſpaſſer puts the Goods upon his own Land, the Owner may enter to take them. 2 *Rol.* 565. *l. ult.* 2 *Rol.* 56.

Otherwiſe, if a Tenant in Common takes all the Goods which he has in Commons, and puts them on his ſeparate Land, the other cannot enter his ſeparate Land to retake them, tho' he may retake his Part, where he can do it without a Treſpaſs. *R.* 2 *Rol.* 566. *l.* 30.

So the Vendee of Goods, Timber, *&c.* may juſtify an Entry to take them. 2 *Rol.* 567. *l.* 40.

So the Owner of a Water-pipe by Grant or Preſcription, *&c.* may juſtify entring into the Land, where it lies, to repair it. *R.* 2 *Rol.* 567. *l.* 45, 50.

So a Foreſter may juſtify entring into Land, next the Foreſt, by Preſcription to rechaſe Deer to the Foreſt. *R.* 13 *H.* 7. 16.

So, if Goods are ſtolen and left in *B.*'s Houſe, the Owner may enter to take them. 2 *Rol.* 55, 6.

So a Sheriff or his Officer may enter, where the Door is open, to do Execution upon the Goods there. *R. Cro. El.* 759.

So, *A.* may juſtify entring the Houſe of *B.* then there to demand his Debt of him. *Semb. Cro. El* 876.

But if *A.*'s Goods are in *B.*'s Houſe or Land without his own Act, *A.* cannot juſtify entring to take them, without *B.*'s Licence. *Semb. Cro. El.* 246. *R.* 2 *Rol.* 55. *Vide ſupra.*

Tho' he has Licence from *B.*'s Wife in his Abſence. *R. per* 3 *J. Cro. El.* 246.

So he cannot take his Goods where they are ſubſtantially altered, as if Timber is uſed to build a Houſe. *Mo.* 20.

So, if the Defendant has a Right to dig and take Clay, *&c.* as Tenant, he cannot take that dug by another tho' no Tenant. *R. Cro. El.* 434.

(3 M. 40) Title with Colour to the Plaintiff. When Colour ſhall be given.

So the Defendant may plead Title in himſelf by Deſcent, Fine, Feoffment, Deviſe, *&c.* and give Colour to the Plaintiff.

Colour is a feigned Title given by the Defendant to the Plaintiff in Aſſiſe, Treſpaſs, *&c.* when the Defendant would refer his Title to the Court without ſending it to *Lay Gens*; for without ſuch Colour his Plea will amount to the General Iſſue. *D. & St. l.* 2. *c.* 53. *R.* 10 *Co.* 90. *Dr. Leyfield.*

And Colour muſt be always given, when the Defendant's Plea goes only to the Poſſeſſion; for notwithſtanding a Right may remain in the Plaintiff: As, if the Defendant pleads a Deſcent. 10 *Co.* 90. *b.*

So, if the Defendant pleads that *A.* was ſeiſed in Fee or of the Freehold, and he as Servant and by his Command entred; for the Plaintiff may have a Right by Leaſe for Years or otherwiſe. 10 *Co.* 89. *b.* *Cro. El.* 76.

So, if the Defendant pleads that the Goods were waived in his Manor, or ſold in Market *Overt*, being ſtolen *de quodam Ignoto*, he ſhall give Colour; for *iſte Ignotus* perhaps was the Plaintiff. 10 *Co.* 90. *b.*

But when the Defendant's Plea bars the Plaintiff's Right and Property, no Colour is neceſſary: As, if the Defendant pleads a Collateral Warranty, and relies upon it. 10 *Co.* 90. *a.*

Or an Eſtoppel, or Fine with Proclamations. 10 *Co.* 90. *a.*

Or an Act of Parliament; for in theſe Caſes the Plaintiff will be barred, tho' he had a Right before. 10 *Co.* 90. *b.*

So, if the Plea bars the Plaintiff and his Blood for ever. 10 *Co.* 90. *b.*

So, if the Plea goes to the Plaintiff's Right or Property: As, if the Defendant pleads that *A.* was poſſeſſed of Goods, and ſold them in Market *Overt*, there needs no Colour; for the Plea avoids the Plaintiff's Property. 10 *Co.* 90. *b.*

Or, *that A. was poſſeſſed, and B. ſtole and waived them in his Manor.* 10 *Co.* 90. *b.*

That the Goods were Wreck. 10 *Co.* 90. *b.*

That they were Tithes ſevered from the nine Parts, for this takes away the Property of every other. *R.* 10 *Co.* 91. *a.*

So, *that A. enfeoffed B. and he as his Servant entred*; for when he ſhews how *A.* who had the Fee or Freehold, was intitled, the Right ſhall not be intended in the Plaintiff. 10 *Co.* 90. *a.*

That *A.* Lord of the Manor approved the Common is a good Plea to an Aſſiſe for Common, without Colour.

So, if the Defendant intitles him by the Plaintiff himſelf, Colour is not neceſſary. 10 *Co.* 91. *a.*

As, by a Leaſe for Life or Years from the Plaintiff.

So, if the Plea is to the Writ or the Action of the Writ, Colour is not neceſſary. 10 *Co.* 91. *a.*

So, if the Defendant pleads a general Bar, no Colour is neceſſary.

So, where the Defendant admits that the Plaintiff had an Eſtate, which is now defeated by Condition, Entry, *&c.*

[In Treſpaſs, if Plaintiff declares on his Poſſeſſion, and Defendant makes Title, and gives Colour, and Plaintiff replies *de Injuria, &c.* and traverſes Defendant's Title, it is ſufficient; for he need not reply a Title, Poſſeſſion being enough againſt Wrong-doer. *Cary* v. *Holt*, *M.* 19 *G.* 2. *Str.* 1238.]

(3 M. 41.) What Colour ſhall be good.

Every Colour muſt be Matter of Law, which does not lie in the Knowledge of *Lay Gens*: As, a Claim by Colour of a Charter of Feoffment by which Nothing paſſed, *&c.* 10 *Co.* 91. *b.* 2 *Cro.* 122.

By a Grant of a Reverſion to which there was no Attornment. 2 *Cro.* 122.

So it muſt be a Matter, which would be a good Title if it was real. 10 *Co.* 91. *b.*

It muſt be Matter, which has the Appearance of a continuing Title: And therefore, if it is by Colour of a Leaſe for the Life of *A.* it muſt ſay, *now living*; for, if he is dead, there is no Appearance of Title. 10 *Co.* 91. *b.*

So Colour muſt be given from him, who firſt conveyed, otherwiſe all prior Conveyances are waved. 10 *Co.* 89, 91. *b.*

But Default of Colour is Form only, and aided upon a general Demurrer. 10 *Co.* 95. *a.* *R.* 2 *Cro.* 229.

So, if the Defendant gives the Plaintiff a real Title, it is bad; for it ought to be Colour of Title only: As in Treſpaſs for Goods, if the Defendant pleads that *A.* poſſeſſed gave them by Deed to the Plaintiff, who claiming by it, the Defendant retook them, it is bad; for a Gift by Deed is a good Title. *R.* 2 *Cro.* 122.

So, if the Defendant pleads that the Plaintiff by Colour of a Leaſe for Years, *&c.* for a Leaſe gives a Title to the Poſſeſſion. 2 *Cro.* 122.

By Colour of Letters Patent. 2 *Cro.* 122.

So the Defendant may juſtify Treſpaſs *quare Clauſum or Domum fregit* by Entry to execute Proceſs. *Vide Ante*, (3 M. 24.) (3 M. 42.) Other Juſtifications.

Or to make a Diſtreſs. *Vide Ante*, (3 M. 25.)

To make Uſe of his Way. *Lut.* 1427.—In the Highway. *Win.* 1004. *Vide Chimin*, (D. 1, 2)—*Vide Ante*, (3 K. 25.)

Or Common. *Vide Common.* (F. 1, &c.—*Vide Ante*, (3 K. 24.)

To make Perambulation. *Co. Ent.* 651. *b.*

To take his Corn, Cattle, *&c.*

To repair his Houſe, Watercourſe, *&c.* or to remove a Nuſance,

To fiſh in his ſeveral or free Fiſhery. *Hard.* 407. *Vide Piſcary*, (A. B.)

So the Defendant may juſtify by Command of another Defendant, who pleads *Not guilty*; for his Plea ſhall not take away from his Servant his Juſtification. *R.* 2 *Mod.* 67.

So to Treſpaſs by *B.* the Defendant may plead in Bar a Recovery by himſelf againſt him in Ejectment. *R.* 1 *Leo.* 313. 3 *Leo.* 104.

Or a Recovery or Bar in another Action for the ſame Treſpaſs. *Vide Action*, (K. 1, &c.)

If the Defendant juſtifies by Title to a Manor, Houſe, *&c.* it is not ſufficient to ſay *unde Locus in quo, &c.* is Parcel, without ſaying that *fuit Tempore Tranſgreſſionis ſuppoſit.*' 1 *Leo.* 75.

[If the *Locus in quo*, in Treſpaſs *Quare clauſum, &c.* is the Inheritance of the Crown, (as *Windſor* Great Park,) Defendant, on not Guilty pleaded, cannot give in Evidence, that it was a common Highway. *Ducheſs of Marlborough* v. *Grey*, M. 1728. *Bunb.* 259.]

(3 N) Pleading in Warrantia Chartæ.

(3 N. 1.) When it lies.

A Writ of *Warrantia Chartæ* lies when a Man by Deed enfeoffs another with Warranty, the Feoffee may have this Writ againſt the Feoffor or his Heir. *F. N. B.* 134. *D.*

And the Writ ſays *quod juſte Warrantizet Manerium de D. quod tenet & tenere de eo clamat, & unde Chartam ſuam habet*, or *Chartam A. Patris ſui cujus Hæres ipſe eſt, &c.* *F. N. B.* 134. *E.*

But it is not material whether he holds of the Defendant or another. *F. N. B.* 134. *E.*

So,

So, it is not neceſſary that the Plaintiff had a Charter of Warranty, tho' the Form is ſuch; for the Plaintiff ſhall have a *Warrantia Chartæ* where he holds by Homage *Aunceſtrel*, which imports Warranty. *F. N. B.* 134. *F.*

Or, if he claims by Exchange, without expreſs Warranty in the Deed. *Q. F. N. B.* 135. *B.*

So a Leſſee for Life, or Donee in Tail, rendring Rent, ſhall have a *Warrantia Chartæ*; for by the Statute *de Bigamis ch. ult'*, the Reverſion and Rent contain Warranty. *F. N. B.* 134. *G.*

So a *Warrantia Chartæ* lies *quia Timet*, before Action ſued, as well as after, *F. N. B.* 134. *K.* 135. *L.* *Hob.* 21.

So it lies before Action ſued, tho' the Plaintiff may be impleaded in an Action in which Voucher lies, and if he is afterwards impleaded in ſuch Action, he muſt vouch, or have a *Scire facias* upon the Judgment in *Warrantia Chartæ*. *F. N. B.* 134. *K.* 135. *A.* *Bo. R. Act* 240. *R. Mo.* 859.

So it lies *pendente Placito* in an Action in which Voucher lies, and if the Plaintiff recovers his Warranty, and afterwards loſes his Land, he ſhall have an *Habere facias ad Valentiam* without a *Scire facias*. *F. N. B.* 135. *D.*

So, if the Vouchee does not appear upon the *Sequat' ſub ſuo Periculo*. *Co. Lit.* 102. *a.*

So, if a Man is impleaded in Aſſiſe, Writ of Entry in the Nature of an Aſſiſe, *&c.* where Voucher does not lie, and loſes his Land, he may afterwards have *Warrantia Chartæ*. *F. N. B.* 134.

But if he loſes his Land in an Action, in which he may vouch, and he does not vouch, he cannot afterwards have a *Warrantia Chartæ*. *F. N. B.* 134. *I.*

A fortiori if he vouches and has Judgment to recover in Value. *Co. Lit.* 102. *a.*

So he ſhall not have a *Warrantia Chartæ*, if there be no Warranty in the Conveyance by which the Land paſſed, or in the Releaſe or Confirmation of it. *Hob.* 21. *Vide ſupra.*

So no one ſhall have a *Warrantia Chartæ*, if he is impleaded, when he is only Pernor of the Profits, and not *Terre-tenant*. *F. N. B.* 135. *C.*

If he is in of another Eſtate by which the Warranty is determined. *F. N. B.* 135. *G.*

(3 N. 2.) Proceſs.

The Proceſs in *Warrantia Chartæ* is Summons, Attachment and Diſtreſs infinite.

And if *Nihil* is returned, a *Capias* lies. as in Covenant.

(3 N. 3) Count.

The Count in *Warrantia Chartæ* muſt ſhew the Specialty of the Warranty and Lien. *Hob.* 21.

And therefore, if it is upon a Warranty in a Fine, it muſt ſhew the Fine, and to whoſe Uſe it was, and the Default in the Defendant to warrant. *Hob.* 20.

So the Count and Writ muſt ſhew the ſpecial Caſe for Warranty. *R. Mo.* 360.

Warrantia Chartæ lies in whatever County the Plaintiff pleaſes, if no Place is mentioned where the Deed was dated; if it is mentioned, it muſt be in that County; and in Warranty by reaſon of Homage *Aunceſtrel*, where the Land lies. *F. N. B.* 135. *F.*

But, if it ſhews a joint Warranty by *A.* and his Son, it may charge the Son as Heir to *A.* *Mo.* 20.

So the Count concludes *ad Damnum* of the Plaintiff. *Hob.* 23.

Tho' the Writ be *quia Timet*, in which Caſe he ſhall not recover Damages. *Ibid.*

(3 N. 4.) Plea.

The Defendant may plead, that the Plaintiff is not yet impleaded, on which the Plaintiff ſhall have his Judgment immediately; for it admits his Lien to Warranty. *Hob.* 23. *F. N. B.* 134. *K.*

So the Defendant may plead that the Plaintiff was not Tenant of the Land the Day of the Writ purchaſed, for *Warrantia Chartæ* lies only by the Tenant of the Land. *Hob.* 22. *Mo.* 860.

But Tenant by Admittance is ſufficient; for the Vouchee may have a *Warrantia Chartæ* to deraign the Warranty *paramount*. *Hob.* 22.

So he may plead the general Bar *non dedit* or *non conceſſit*, *&c.* for if Nothing paſſed by the Deed, the Warranty does not bind. *Hob.* 22. *Mo.* 860.

(3 N. 5.) Judgment.

All the Lands, which the Defendant had at the Time of the Writ, ſhall be bound by the Judgment, tho' aliened afterwards. *F. N. B.* 134. *I.*

If there is Judgment for the Plaintiff, and he is afterwards impleaded for Rent, he may have a *Scire facias* upon the Judgment. *Mo.* 860.

But tho' the Plaintiff has Judgment in a *Warrantia Chartæ*, whereby the Land, which the Defendant had at the Time of the Writ purchaſed, is bound, yet, if the Plaintiff is afterwards impleaded, for the Land warranted, and loſes it, if he does not vouch the Warrantor, he ſhall not have the Benefit of his Judgment in *Warrantia Chartæ*. *F. N. B.* 134. *K.*

So, if he is impleaded in Aſſiſe, or *Scire facias*, *&c.* in which he cannot vouch, he ought to give Notice to him, who made the Warranty, and inquire what Defence he ſhall make, otherwiſe he ſhall have no Advantage of his Recovery in *Warrantia Chartæ*. *Q. F. N. B.* 135. *a.*

(3 O) Proceeding in Waſt.

(3 O. 1.) Proceſs.

THE Original in Waſt is a Summons, which was given by the *St. W.* 2. 14. inſtead of a Prohibition at Common Law. 2 *Inſt.* 389.

And if it be againſt a Tenant in Dower, or Guardian, it does not recite the Statute. *F. N. B.* 55. *C. Lut.* 1548.

But a Writ againſt Tenant for Life or Years recites the Statute. *Ibid.*

So, if it is againſt Tenant by the *Curteſy*. *F. N. B.* 56. *C.*

If the Statute is recited, it is ſufficient, tho' it is not exactly recited. *Lut.* 1548. *Vide Action upon Statute*, (I.)

Tho' the Concluſion of the Writ is larger, or leſs than the Recital: As, if [*Terris*] is omitted in the Recital, and at the Concluſion the Waſt is alledged in *Terris*. *Lut.* 1548. *F. N. B.* 56. *I.*

Or, if the Statute is recited in *Terris*, *Domibus*, *Boſcis et Gardinis*, and Waſt is alledged in *Terris* only, or a Houſe only, *&c.* *Lut.* 1548.

At the Return of the Summons, the Defendant may caſt an Eſſoin.

After Return of the Summons, or if an Eſſoin is caſt, at the Day to which it was adjourned, by the *St. W.* 2. 14. the Plaintiff ſhall have an Attachment. *Clift* 825.

If an Eſſoin was not caſt upon the Summons, it may be at the Return of the Attachment.

By the *St. W.* 2. 14. If the Defendant does not appear upon the Attachment, a *Diſtringas* goes. *Clift* 828.

If the Defendant does not appear upon the *Diſtringas*, by the *St. W.* 2. 14. *Mandetur Vicecom' quod in Propria Perſonâ aſſumpt' ſecum duodecim, &c. accedat ad Locum Vaſtat' & inquirat de Vaſto, & poſt Inquiſitionem return' procedat ad Judicium ſecundum quod continet', in Stat. de Gloc.* 5.

The Judgment ſhall be *Quod recuperet Locum per Viſ' Jur'*. *R. Ow.* 12. *Pop.* 24. *Co. Ent.* 696. *b.*

Tho' all the Proceſſes are returned *Nichil*, ſo that it may be that the Defendant was never ſummoned, nor any Writ ſerved, yet, if he does not appear upon the *Diſtringas* an Inquiry of the Waſte ſhall be awarded. 2 *Inſt.* 389.

If Default be by Tenant by the Curteſy or in Dower, as well as for Life or Years. *Win. Ent.* 1046. (or 1160. Edit. 1680.)

And there ſhall be an Inquiry of the Damages, as well as of the Waſt. *R. Cro. El.* 18. *R. Hutt.* 44.

But if the Defendant appears upon the *Diſtringas* and pleads, tho' he afterwards makes Default, there ſhall be no Inquiry of Waſt, for this Caſe is not within the Purview of the Statute. 2 *Inſt.* 390.

So, if there be Judgment by Confeſſion, *Nil dicit*, or *Non ſum informatus*, there ſhall be Inquiry of Damages only; for the Waſt is confeſſed. *R. Cro. El.* 18. *Hutt.* 44.

And if he releaſes his Damages, the Plaintiff ſhall have Judgment immediately for the Place waſted. *Hutt.* 44.

And the Sheriff need not go to the Place waſted in Perſon. *R. Poph.* 24.

Yet Judgment may be entred *per Viſum Juratorum*. *Ow.* 12. *Poph.* 25.

And if the Inquiry is by more Jurors than twelve, it will be good. *R. Cro. Car.* 414.

And they may find entire Damages for all the Waſt aſſigned. *R. Cro. Car.* 414.

A Writ for Waſt *in Dote* muſt be againſt the Wife. *Reg.* 72. *a.*

And it ſhall not be ſaid Waſt by *Exile*, except where the *Villeins* of a Manor are expelled from the Manor. *Reg.* 72. *a. F. N. B.* 55, *C.*

So a Writ by him in Remainder executed by the Statute of Uſes muſt be ſpecial. *R. Dal.* 5.

(3 O. 2.) Count.

(3 O. 2.) Muſt ſhew the Plaintiff's Title. *By whom Waſt ſhall be brought. Vide Waſt*, (C. 2, 3.)

In Waſt the Plaintiff muſt ſhew how he is entitled to the Inheritance. 2 *Rol.* 832. *l.* 40. *Hob.* 84. *Vide Ante*, (C. 34.)

And therefore, if he counts upon a Leaſe by himſelf, he muſt ſhew his Seiſin in Fee and Demiſe to the Defendant. *Yel.* 140.

If upon a Leaſe by his Anceſtor, he muſt ſhew Seiſin, a Demiſe to the Defendant, and Deſcent to the Plaintiff. *Co. Ent.* 708. *b.*

If the Plaintiff claims by Fine, he muſt plead the Fine, and the Uſes of it. *Co. Ent.* 700, 701. *Clift* 819.

If by Common Recovery, he muſt ſhew the Recovery and Uſes. *Win. Ent.* 1025. (or 1139. Edit. 1680.) *Lut.* 1541. *Clift* 814.

If by Grant of the Reverſion, he muſt ſhew how he claims *ex Aſſignatione*. 2 *Rol.* 831. *l.* 40. 2 *Sand.* 230, 234. *Co. Ent.* 603. *Win. Ent.* 1050, 1051. (or 1164.) *Lut.* 1543.

If the Plaintiffs ſue as Parceners or Jointenants, the Declaration ſhall ſhew that they are ſo. *Win. Ent.* 1049. (or 1163.)

If the Plaintiff ſues as Rector, *&c. in Jure Eccleſiæ*, he muſt ſhew that he is ſo. *Win. Ent.* 1047. (or 1161.)

If Huſband and Wife in Right of the Wife ſue, they muſt alledge the Reverſion in both. *R. Hob.* 1.

But if he concludes *ad Exhæreditation'*, it ſupplies the Omiſſion of what Eſtate he was ſeiſed, after a Verdict. *Per* 2 *J. Cro. El.* 57.

So if he counts of a Feoffment to *A.* to the Uſe, *&c.* it is ſufficient without ſaying that it was to *A.* and his Heirs. *R. Hob.* 84.

If the Plaintiff ſhews the ſpecial Matter, it is ſufficient, tho' he does not name himſelf Aſſignee. *R.* 2 *Rol.* 831. *l.* 50.

So, if the Writ is general, *cujus Hæres* the Plaintiff is, tho' he has a ſpecial Inheritance. *R.* 1 *Leo.* 48.

So, if the Plaintiff ſhews a Fine to the Uſe of *B.* for Life, and afterwards to *A.* and the Heirs of his Body, and afterwards to the Plaintiff in Fee, and that *A.*

A. died, *per quod B.* was ſeiſed for Life, Remainder to the Plaintiff, and that *B.* committed Waſt to his Diſheriſon, this ſupplies the Omiſſion that *A.* died without Iſſue. *R. Cro. Car.* 401.

If the Plaintiff has the Reverſion, he ſhall ſay that the Defendant holds of him. 2 *Rol.* 830. *l.* 36.

Otherwiſe, if Waſt is brought by him in Remainder. 2 *Rol.* 830. *l.* 38. 40. *Dal.* 5.

Or by the Lord, who has by Eſcheat, for there is no Tenure of him. *Hutt.* 110.

(3 O. 3.) How the Waſt ſhall be charged. In the *Tenet* or the *Tenuit*. *Againſt whom Waſt ſhall be brought, Vide Waſt*, (C. 4, 5.)

The Plaintiff muſt always charge the Defendant in the *Tenet*, or in the *Tenuit*; for there is no other Form. *R. Cro. El.* 356.

And muſt charge him as Aſſignee, Executor, *&c. Co. Ent.* 693, 695.

And muſt charge him by Virtue of the Leaſe, by which he is poſſeſſed, as, if he be in, in his Remitter, he muſt charge him as Tenant by his ancient Leaſe. 2 *Rol.* 831. *l.* 7.

If the Defendant is in by Deviſe, he muſt charge him as Tenant *ex Legatione*. 2 *Rol.* 831. *l.* 21. *R. Hutt.* 110. *Co. Ent.* 700.

If the Defendant claims by a Remainder for Life or for Years, which is now in Poſſeſſion, he may be charged upon a Demiſe to him. 2 *Rol.* 831. *l.* 25

But, if the Defendant is in by the Statute of Uſes, it is ſufficient to charge him generally, without ſaying of whoſe Demiſe. *R.* 2 *Leo.* 222.

Waſt by an Infant againſt his Guardian ſhall be always in the *Tenet*. 2 *Rol.* 829. *l.* 51.

So againſt Tenant for Life it ſhall be in the *Tenet*, for there is no other Form. 2 *Rol.* 830. *l.* 3.

Tho' after the Waſt he granted over his Eſtate. 2 *Rol.* 829. *l.* 45.

Or the Leſſor had entred for Forfeiture or Condition broken.

So, if a Woman, Tenant for Life, commits Waſt, and aſſigns her Eſtate, and takes Huſband, it ſhall be againſt them, that *tenent*. 2 *Rol.* 829. *l.* 53.

But Waſt by an Heir after full Age, againſt his Guardian, ſhall be in the *Tenuit*. 2 *Rol.* 830. *l.* 18, 20. *Co. Lit.* 54. *a.*

So againſt a Tenant for another's Life after the Death of *Ceſtui que vie*. 2 *Rol.* 830. *l.* 15.

Or againſt Tenant for Years after the Term expired. 2 *Rol.* 830. *l.* 10.

Or after Forfeiture. 2 *Rol.* 830. *l.* 16.

So, if a Woman commits Waſt, and then *Ceſtui que vie* dies, or the Term expires, and ſhe takes Huſband, the Declaration ſhall be *quod tenuerunt*. 2 *Rol.* 830. *l.* 25.

Or that the Wife, *dum ſola, tenuit*. 2 *Rol.* 830. *l.* 30.

The Declaration ſhall ſuppoſe That the Defendant *tenet ad Terminum Annorum*, tho' he holds only for one Year, or half a Year. *Co. Lit.* 54. *b.*

If the Leaſe is to two, and the Writ ſuppoſes *quod tenent* or *tenuerunt*, which imports a joint Eſtate, it is good; tho' one of the Defendants has it by Aſſignment from the Leſſee. *R.* 1 *Leo.* 48.

If he declares upon ſeveral Demiſes, it will be good. *R. Ow.* 11. *Poph.* 25.

(3 O. 4.) Conformable to the Writ.

The Declaration muſt aſſign the Waſt, conformable to the Writ; for if the Writ is for Waſt in Land, and it is aſſigned in cutting Wood, it is bad. *Mo.* 73. *Vide Ante*, (C. 13.)

If it is for three *Vills*, and the Declaration is for Waſt in one or in another *Vill*. *R. Mo.* 862.

(3 O. 5.) Particulariſing the Quantity and Quality, *&c.*

So it muſt particulariſe the Quality or Quantity of the Waſt: As, if it is in cutting Trees, he muſt ſhew the Number of the Trees. 2 *Rol.* 832. *l.* 50.

If Waſt conſiſts in Quantity, it muſt ſay ſo many *Carectat'*. 2 *Rol.* 832. *l.* 52.

If Waſt is aſſigned *in Domibus*, it muſt ſhew the particular Defects.

If it is aſſigned in Land, it muſt ſay in what Pariſh it lies. *R.* 3 *Leo.* 9.

If

If the Demiſe is of a Moiety of a Manor, and other Lands, and the Waſt aſſigned in Wood, Parcel of the Premiſſes, it is bad; for it cannot be Parcel of the Manor, and alſo of the other Lands. *R.* 3 *Leo.* 9.

So it is ſufficient to aſſign Waſt directly without ſhewing the particular Manner in which it was committed: As, if the Waſt is by a Stranger, it is ſufficient to ſay, that the Defendant committed Waſt in cutting, *&c.* without ſaying *in Permittendo* the Stranger, 2 *Rol.* 833. *l.* 7.

If it is in *Germins*, it is ſufficient to ſay that he deſtroyed the *Germins* generally, without ſaying that he ſuffered the Hedges of the Wood to be neglected, whereby Cattle entred and eat the *Germins*. 2 *Rol.* 833. *l.* 5.

(3 O 6.) Muſt be *ad Exhæreditationem Quærentis.*

So the Declaration muſt be *ad Exhæreditationem* of the Plaintiff.

If the Plaintiff is ſeiſed in Right of his Wife, it ſhall be *ad Exhæreditationem* of the Wife. 2 *Rol.* 832. *l.* 15, 20.

If Waſt be by an Abbot, Prior of an Hoſpital, *&c.* it ſhall be *ad Exhæreditationem Domus, Hoſpital', Abbat'*, or *Eccleſiæ*. 2 *Rol.* 832. *l.* 30.

So, if there are ſeveral Plaintiffs in Waſt, there may be Summons and Severance; for it is real Action, and is *ad Exhæreditationem*. 2 *Inſt.* 307.

(3 O. 7.) Pleas.

(3 O. 7.) No Waſt committed.

To an Action for Waſt the General Iſſue is *No Waſt done*. 2 *Sand.* 238. *Co. Ent.* 700, 708.

And this admits Nothing, but puts the whole Declaration in Iſſue. *R. Lut.* 1547.

And it may be pleaded in all Caſes, where there is no Waſt: As, if Deſtruction happens by Tempeſt, Lightning, Enemies, *&c.*

But it is no Plea, where the Defendant has Matter of Juſtification, or Excuſe.

So, if there is a Leaſe to *A.* for two Years, and afterwards a Leaſe to *B.* for ten Years, in Waſt againſt *B.* for Waſt during the two Years, he cannot plead, *No Waſt done*. *R.* 3 *Leo.* 203.

So he may plead as to Part of the Waſts aſſigned, *No Waſt* done. *Co. Ent.* 702, 3.

If ſeveral Waſts are aſſigned, and the Defendant is Not guilty of Part of any, he may plead *No Waſt done* to all together, and need not ſay to every Part ſeverally *No Waſt*. *Lut.* 1550. *Win. Ent.* 1168.

(3 O. 8.) Releaſe.

So the Defendant may plead in Bar a Releaſe from the Plaintiff, or one of the Plaintiffs. 9 *H.* 5. 15. *Vide Poſt*, (3 O. 16.)

(3 O. 9) Accord.

To Waſt in the *Tenuit*, Accord with Satisfaction. *R. Cro. El.* 357. *Co. Ent.* 707. *b.* *Vide Accord*, (A. 1.)

(3 O. 10.) Pleas in Abatement.

So the Defendant may plead in Abatement to the Plaintiff's Title: As, if he intitles himſelf to the Reverſion in Fee by Deſcent, the Defendant may plead a Deviſe to the Plaintiff in Tail. *Lut.* 1557.

And need not traverſe the Deſcent; but if he does, it will be good upon a general, tho' not upon a ſpecial Demurrer. *R. Lut.* 1558.

So the Defendant may plead that the Plaintiff has Nothing in Reverſion. *Yel.* 141.

But he ought to ſhew how the Reverſion is diveſted, for *Nothing in Reverſion* generally will be bad. *Co. Lit.* 356. *a.*

Except where Waſt is brought by a Grantee of the Reverſion. *Co. Lit.* 356. *a.*

So, if the Plaintiff's Title fails *pendente Lite*, the Defendant may plead it after the laſt Continuance.

As, if his Reverſion fails. *Yel.* 141.

If he becomes Tenant in Tail after Poſſibility. 1 *Rol.* 106.

So the Defendant may plead in Juſtification, that he took for Repairs, *Co. Ent.* 703. *a. Win. Ent.* 1029. (or 1142. Edit. 1680.) *Vide Waſt*, (E. 1, &c.) (3 O. 11.) In Juſtification. For Repairs.

That he pulled down, to rebuild and repair the Houſe, Fences, &c. Win. Ent. 1029, 1067. (or 1142, 1182.)

That he took for Repair of the Fences and other neceſſary Uſes. Win. Ent. 1029.) or 1142.)

But it is not ſufficient to ſay, that he took for Repairs, if he does not add that he uſed or keeps for Repairs. *R.* 3 *Lev.* 323.

So he may plead that he took for other Neceſſary Boots: As, for Fuel. *Co. Ent.* 703. *a. Win. Ent.* 1032. or 1144.) *Vide Waſt*, (E. 1, &c.) (3 O. 12.) For Boots.

Or for neceſſary Wainboot, Cartboot or Plowboot. *Win. Ent.* 1030, 1055. (or 1144, 1169.)

Or for Gates, Stiles, *&c. Win. Ent.* 1031. (or 1145.)

Or for making Utenſils of Huſbandry. *Win. Ent.* 1055. (or 1169.)

Or for Hedgeboot. *Co. Ent.* 703. *a.*

So he may plead that they were *Aridæ mortuæ, nec Fructum nec Folia portan'.* (3 O. 13.) *Aridæ Mortuæ.*

But it is not ſufficient to ſay *Quæ fuerunt Aridæ, Cavæ, in Columnis putridæ, Anglice* Pollards, *non habeñ' ſufficiens Maheremium pro aliquibus Edificiis. R. Mo.* 101.

So he may plead that the Leaſe was without Impeachment of Waſt. *R.* 2 *Rol.* 835. *l.* 10, 15. *Co. Ent.* 694. *b. Vide Waſt*, (E. 3.) (3 O. 14) Leaſe without Impeachment, *&c.*

That the Plaintiff's Anceſtor made a Bargain and Sale of the Trees to him. Win. Ent. 1043. (or 1157. Edit. 1680.)

That the Leſſor covenanted that the Leſſee might cut down Trees. *Hard.* 113. 1 *Leo.* 117.

But it is no Bar, that the Leſſor covenanted to repair, and that he did it for him. *R. Mo.* 23.

So the Defendant may plead in Excuſe *Quod reparavit* before the Action brought; for the Jury muſt view the Place waſted. 5 *Co.* 119. *b.* 2 *Inſt.* 307. (3 O. 15) In Excuſe. *Reparavit.*

Quod reædificavit, and ſince kept in Repair. 2 *Leo.* 189.

But *reparavit pendente Lite* is no Plea. 2 *Inſt.* 307.

So the Defendant may plead a Releaſe from the Plaintiff.

And if the Waſt is by two Plaintiffs in the *Tenuit*, a Releaſe by one is a Bar to both. 2 *Inſt.* 307. (3 O. 16.) A Releaſe.

But where Waſt is in the *Tenet*, a Releaſe by one Plaintiff bars himſelf only. 2 *Inſt.* 307. *Vide Ante*, (3 O. 8.)

So the Defendant may plead that it was ſo ruinous at the Commencement of his Leaſe *Quod reparari non potuit. Mo.* 54. *Win. Ent.* 1045. (or 1159. Edit. 1680.) *Vide Waſt*, (E. 4.) (3 O. 17.) *Repari non potuit.*

So the Defendant may plead, *no Demiſe made to him.* (3 O. 18.) No Demiſe.

Or *no Demiſe as to Part. Co Ent.* 697. *b.*

Or that Wood was excepted by the Demiſe. *Win. Ent.* 1062. (or 1176.)

Or *Nihil habet ex Aſſignatione de B. Ibid.*

So, that, after the Demiſe, the Defendant aſſigned, before which Aſſignment no Waſt was done. *Co. Ent.* 697. *b.*

To Aſſignment before Waſt done, the Plaintiff may reply, that the Aſſignment was by Fraud, and he afterwards took the Profits. *Co. Ent.* 698. *a.* Replication.

And if the Defendant rejoins he muſt traverſe the Pernancy of the Profits, not the Fraud. *R.* 5 *Co.* 77. *b.*

So the Defendant may plead, *a meſne Remainder-Man ſtill alive. Win. Ent.* 1019. (or 1132 Edit. 1680.) (3 O. 19.) A meſne Remainder-man alive.

(3 O. 20.) *Venire facias.*

After Iſſues joined upon ſeveral Pleas, if the *Venire facias* recites the Iſſues, and commands *Quod venire fac' duodecim, &c. ad inquirendum ſi* Defendant *fecit Vaſtum*, as the Plaintiff alledges, it is ſufficient; for this implies *quod inquir'* of the ſeveral Iſſues. *R. Cro. Car.* 381.

(3 O. 21.) View in Waſt.

In Waſt, if Iſſue is joined, the Jury ought to have a View of the Place waſted, otherwiſe the Trial ſhall be ſtaid. *Lut.* 1558. 2 *Sand.* 254.

And therefore, if Waſt is aſſigned in ſeveral Places, the Jury may find *no Waſt done* in a Place of which they had no View. *Per Dy.* 1 *Leo.* 267.

And they ought to have a View, tho' the Iſſue is upon a collateral Point, and the Waſt is confeſſed. *Per* 2 *J. Glanv. cont. Noy* 5.

The *Venire facias* ſhall be, that the Jury ſhall have a View. *Win. Ent.* 1039. (or 1153 Edit. 1680.)

And ſix Jurors at leaſt muſt have the View. 2 *Sand.* 254.

And, if it is not returned, the Court may examine whether the Jurors have viewed or not. 2 *Sand.* 254.

So, if it is returned, the Court may examine; for the Return does not conclude the Parties. 2 *Sand.* 255.

But, if the Waſt is aſſigned in a Wood *ſparſim*, it is ſufficient, if the Jury view the Wood, tho' they do not enter into it. *R.* 1 *Leo.* 267.

So, if it be in ſeveral Rooms of a Houſe, it is ſufficient, if they have a general View of the Houſe. 1 *Leo.* 267.

So it is not neceſſary, that the Officer return, upon the *Diſtringas Juratorum*, that the Jury have viewed. *R.* 2 *Sand.* 254.

Or that he be preſent at the View. 2 *Sand.* 255.

(3 O. 22.) Judgment in Waſte.

What ſhall be recovered, Vide Waſt.

If there be Judgment for Want of an Appearance upon the *Diſtringas* by the *St. W.* 2. 14. The Sheriff taking Twelve, *&c.* ſhall go to the Place waſted and take an Inquiſition of the Damage, and upon the Return thereof there ſhall be Judgment. *R. Ow.* 12. *Vide Ante*, (3 O. 1.)

If the Defendant ſuffers Judgment by Confeſſion, *Nil dicit*, or *Non ſum informatus*, there ſhall be Inquiry of the Damages only. *Vide Ante*, (3 O. 1.)

If the Judgment is againſt the Defendant in the *Tenet*, it ſhall be *pro Loco vaſtato*, and for Damages.

If the Judgment is againſt the Defendant in the *Tenuit*, it ſhall be for Damages only.

If the Verdict is for the Defendant, the Judgment ſhall be *quod querens nil capiat, &c.* and the Defendant *eat ſine Die*. 2 *Sand.* 247.

And if the Defendant will not pray Judgment, to avoid a Writ of Error, it may be entred, upon the Prayer of the Plaintiff, againſt himſelf. *R.* 2 *Sand.* 253.

* The ſeveral Titles under Letter (P), which ſhould in Alphabetical Order have been placed after Title [*Pleader*] were All inſerted in the Fourth Volume; in order to give this Title intire in one Volume.

QUAKER.

Vide Juſtices of Peace, (B. 21.)

QUALE JUS.

(A) When it lies.

A Recovery by Default, tho' made by Colluſion, was not an Alienation in *Mortmain*, contrary to the *St. Mag. Ch.* 36. or *St. de Religioſis.* 7 *Ed.* 1. 2 *Inſt.* 429.

And therefore, by the *St. W.* 2. 13 *Ed.* 1. 32. It was enacted, that after Judgment by Default at the Suit of an Eccleſiaſtical Perſon, *inquiratur per Patriam, utrum Petens habeat Jus, vel non:* If found that he had Right, *recuperet Seiſinam, &c.* if he had no Right, *incurratur Domino feodi, &c*

And by this Statute, where an Eccleſiaſtical Perſon recovers by Default, a Writ of *Quale Jus* iſſues.

And this Writ ought to iſſue, regularly, after the Default and before Judgment. 2 *Inſt.* 430.

QUALIFICATION.

Vide Eſgliſe, (N. 8, 9.)

QUARENTINE.

The Writ de Quarentinâ habendâ.

BY the *St. M. Ch.* 9 *H.* 3. 7. A Wife ſhall have Quarentine for forty Days in the capital Meſſuage of her Husband; if it be not a Caſtle. *Vide Dower,* (A. 11.)

And if ſhe be ouſted, ſhe ſhall have a Writ *de Quarentinâ habendâ,* which is *Viſcontiel,* and a Commiſſion to the Sheriff to proceed thereon. *F. N. B.* 161. *E.*

And thereupon the Sheriff ſhall make Proceſs immediately againſt the Party, to anſwer in two or three Days, and need not ſtay till the County Court. *F. N. B.* 162. *A.*

QUARE CLAUSUM FREGIT.

Vide Pleader, (3 M. 34, &c.)—*Treſpaſs,* (B. 1.—C. 1.—D.)

QUARE EJECIT INFRA TERMINUM.

(A) When it lies.

IF a Leſſor enters upon his Leſſee for Years, and enfeoffs another in Fee, or for Life, *&c.* the Leſſee ſhall have againſt him a Writ of *Quare ejecit infra Terminum,* and ſhall recover his Term and Damages. *F. N. B.* 197. *S.*

Or, if the Term be determined, ſhall recover his Damages. *F. N. B.* 197. *T.*

So, if the Heir of the Leſſor enters, and makes a Feoffment to another, &c. *F. N. B.* 198. *C.*

Or the Lord by Eſcheat. *Semb. F. N. B.* 198. *F.*

So, if the Leſſee be ouſted, and his Leſſor diſſeiſed by a Stranger, and the Leſſor afterwards releaſes to the Diſſeiſor. *F. N. B.* 198. *H.*

So, if the Leſſor ſuffers a common Recovery againſt him, tho' the Leſſee could not falſify ſuch a Recovery before the *St.* 21 *H.* 8. 15. *F. N. B.* 198. *E.*

So, if a Leſſee aſſigns his Term, his Aſſignee may have the Writ of *Quare ejecit infra Terminum*. *F. N. B.* 198. *D.*

Or, againſt the Survivor of four Leſſors, where the Survivor alone enters, and makes a Feoffment. *Ibid.*

So the Leſſee of a Villein, who purchaſes, and makes a Leaſe before the Entry of his Lord. *F. N. B.* 198. *G.*

(B) How the Proceeding ſhall be.

A *Quare ejecit infra Terminum* lies againſt the Feoffee, &c. or againſt the Leſſor. *F. N. B.* 197. *S.* 198. *K.*

And tho' the Writ ſuppoſes a Sale to the Feoffee, &c. yet the Sale is not traverſable; but the Ejectment only. *F. N. B.* 198. *K.*

The Proceſs is Summons, Attachment, and Diſtreſs infinite. *F. N. B.* 197. *V.*

But no Proceſs lies to Outlawry, becauſe the Writ is not *Vi et Armis*. *Ibid.*

This Writ was founded upon the *St. W.* 2. 24. which gives a Writ *in Conſimili Caſu:* And becauſe an Ejectment does not lie by a Leſſee againſt the Feoffee of his Leſſor, without Entry, for that the Leſſor ouſts him, and not his Feoffee, this Writ was contrived upon this Statute to be brought againſt the Feoffee, &c. *F. N. B.* 198. *A.*

(C) When this Writ lies, or an Ejectment.

BUT, if the Leſſee after Ouſter and Feoffment by his Leſſor enters, and the Feoffee ouſts him, the Leſſee may maintain an Ejectment againſt the Feoffee. *F. N. B.* 198. *A.*

So, if the Feoffee be Party or Privy to the *Ouſter* by the Leſſor. *Ibid.*

So a Leſſee, ouſted by his Leſſor, may have an Ejectment, or Writ of *Ejecit infra Terminum* againſt him, or his Heir, at the Election of the Leſſee. *F. N. B.* 198. *K.*

So, againſt the Lord by Eſcheat, or Lord of a Villein, who leaſed to him; and that without a precedent Entry. *Ibid.*

Vide Ejectment.

QUARE IMPEDIT.

(A) What Remedy for a Church.

REMEDY by Law was provided for the Recovery of a Church, or for the Revenues of a Church.

By the Common Law, there were three Writs for the Church itſelf, *viz.* Right of Advowſon, *Quare Impedit*, and Aſſiſe of *Darrein Preſentment*. 2 *Inſt.* 357.

For the Revenues of the Church, the Parſon had Remeny for his Lands and Tenements by *Juris Utrum*.

(B. 1) Right of Advowſon.

BY the Common Law, in all Caſes where the Church was full by Inſtitution againſt a common Perſon, or by Inſtitution and Induction againſt the King, the rightful Patron would loſe the Advowſon, if he did not recover the Inheritance of it by a Writ of Right of Advowſon. *R.* 6 *Co.* 49. 2 *Inſt.* 357, 358. *Vide Advowſon.*

Tho' the Preſentation, upon which the Church was full, was made by Uſurpation. *Vide Eſgliſe*, (H. 14.)

Tho' the Patron was an Infant, *Feme Covert*, *&c.* 6 *Co.* 49.

But in all theſe Caſes the Patron ſeiſed of the Advowſon in Fee may have Remedy by the Writ of Right of Advowſon. *F. N. B.* 30. *B. F.*

So, before the *St. de Donis* 13 *Ed.* 1. A Patron, who had a Fee Simple Conditional, if he was ouſted of the Advowſon by Uſurpation, ſhould have had a Right of Advowſon.

So, if he, who had a Right to collate, was ouſted by a Plenarty upon a Collation without Title, he ſhould have had a Writ of Right. 6 *Co.* 50. *a.*

So a Right of Advowſon lies for the Advowſon of a Vicarage, Prebend, Chapelry, *&c.* as well as of a Church. *F. N. B.* 31. *C. E.*

So, if a Parſon, who ſues in the Spiritual Court for Tithes to the fourth Part of the Advowſon in Value, be prohibited by an *Indicavit*, his Patron ſhall afterwards have a Right of Advowſon. *F. N. B.* 30. *E.*

So it lies of a Moiety or Third, or Fourth Part of a Church. *F. N. B.* 30. *D.*

And, by Common Law, of a leſs Part; but that is now ouſted by *St. W.* 2. 5. *F. N. B.* 30. *E.*

So, if *A.* and *B.* are ſeiſed of an Advowſon, and to the Heirs of *B.* they may join in a Right of Advowſon for the Benefit of him who has the Fee. *F. N. B.* 30. *F.*

But a Right of Advowſon does not lie by a Tenant for Life, or Years. *F. N. B.* 30. *B.*

Nor, by Tenant by the Curteſy, or in Dower. *Ibid.*

Nor, by Tenant in Tail ſince the *St. de Donis*, tho' he has a Fee expectant. *Ibid.*

So, if a Man had purchaſed an Advowſon, to which he had never preſented, he ſhould not have had a Right of Advowſon before the *St. W.* 2. 5. but his Advowſon was loſt. 2 *Inſt.* 358.

(B. 2.) How the Proceeding in it ſhall be.

In a Right of Advowſon, the Proceſs ſhall be Summons, and *Grand Cape.*

And the Summons ſhall be made upon the Glebe, which ſhall be ſeiſed into the King's Hands upon the *Grand Cape.* *N. N.* 69. *c.* (B. 2.) The Count, *&c.* *Vide Pleader*, (3 I. 1, &c.)

The Plaintiff ſhall count of the Poſſeſſion of an Anceſtor, or his own Poſſeſſion. *F. N. B.* 30. *B.*

And ought to lay the *Eſplees* in the Parſon, in taking Tithes, Oblations, *&c.* *Ibid.*

The Tenant ſhall come and make Defence. *F. N. B.* 30. *C.*

And ſhall have a View of the Church. *N. N.* 70. *a.*

So he may join the *Miſe* by Battle, or the Grand Aſſiſe. *F. N. B.* 30. *C.*

But in the Caſe of the King, the Tenant cannot tender a Demy-Mark, to inquire of the Seiſin alledged by the King in his Count, as he may in the Caſe of a common Perſon. *F. N. B.* 31. *D.*

So final Judgment ſhall not be againſt the King, tho' the *Miſe* was joined between the King and the Tenant. *Ibid.*

(C) Aſſiſe of Darrein Preſentment.

(C. 1.) When it lies.)

AN Aſſiſe of *Darrein Preſentment* lies, where a Man, or his Anceſtor, has preſented to a Church, and, upon a ſubſequent Avoidance, another uſurps upon him.

So, by the *St. W.* 2. 5. The Heir, or he in Reverſion, ſhall not be prejudiced by a Preſentation by his Guardian, or by Tenant in Dower, by Curteſy, for Life, or for Years, or by the Donee in Tail, but that he may have ſuch Action poſſeſſory at his full Age, or when the Reverſion comes into Poſſeſſion, as his Anceſtor might have had upon the laſt Preſentation in his Time.

So he ſhall have this Writ, tho' the laſt Preſentation was made by Tenant by the Curteſy, in Dower, for Life, or for Years; if thoſe Eſtates did not commence by the Grant of the Plaintiff himſelf. *F. N. B.* 31. *G.*

So, if a Guardian made the laſt Preſentation in Right of the Plaintiff, then in his Wardſhip. *F. N. B.* 31. *I.*

Or a Stranger, by Uſurpation upon the Plaintiff, then an Infant. *Ibid.*

Or a Stranger, by Uſurpation in Time of War, tho' the Plaintiff was of full Age. *Ibid.*

(C. 2.) When not.

But an Aſſiſe of *Darrein Preſentment* does not lie by one Coparcener againſt another. *F. N. B.* 32. *A.*

Nor, if Tenant for Life, or for Years, claims by Leaſe from the Plaintiff himſelf. *F. N. B.* 31. *I.*

Or, if an Infant purchaſes an Advowſon, and an Uſurpation be made upon him. *Ibid.*

Or, if an Uſurpation be upon a *Feme Covert*, who purchaſed the Advowſon. 2 *Inſt.* 360.

So, if a Purchaſer be a Biſhop, Abbot, *&c.* 2 *Inſt.* 358.

(C. 3.) How the Proceeding ſhall be.

The Proceeding in an Aſſiſe of *Darrein Preſentment* is conformable, in many Reſpects, to the Proceeding in an Aſſiſe of *Novel Diſſeiſin*.

By the *St. M. Ch.* 13. It ſhall be *Coram Juſt' de Banco*; tho' before, it lay in *B. R.* 2 *Inſt.* 27.

So Plenarty is no Bar in an Aſſiſe of *Darrein Preſentment*, any more than in a *Quare Impedit*, if it was not for ſix Months before the Writ purchaſed, by the *St. W.* 2. 5. 2 *Inſt.* 360.

(D) Quare Impedit.

When it lies.

Vide Pleader, 3 I. 1, &c.) *QUARE Impedit* is an antient Writ, which lies by him, who, being in Poſſeſſion of an Advowſon of a Church, is diſturbed in his Preſentation to it. 2 *Inſt.* 356.

So, by the *St. W.*, 2. 13 *Ed.* 1. 5. If any, not having Right, preſent during the Minority of an Infant, in the Time of Tenant in Dower, by the Curteſy, for Life, for Years, in the Time of Tenant in Tail, *&c.* the Infant at full Age, he in Reverſion, and the Iſſue in Tail, may have the ſame Remedy for recovering the Poſſeſſion of the Advowſon, as his laſt Anceſtor, *&c.* might have had in his Time. The ſame Remedy is for a *Feme Covert*, or Men of Religion, if the Uſurpation be during Coverture, or Vacation. 2 *Inſt.* 353.

And therefore, an Infant, who has an Advowſon by Deſcent, after his full Age ſhall have a *Quare Impedit* or *Darrein Preſentment*, tho' the Uſurpation was upon him during his Minority. 2 *Inſt.* 358, 359.

So an Infant may have it during his Minority, when he is out of Wardſhip. 2 *Inſt.* 359.

So an Infant ſhall have a *Quare Impedit*, if an Uſurpation be upon him, tho' his Anceſtor purchaſed, and never preſented to the Advowſon. *Ibid.*

So, the Heir of him in Reverſion, after an Uſurpation in the Time of Tenant by the Curteſy, in Dower, for Life, for Years, Tenant by Statute-Merchant, Staple, or *Elegit*. 2 *Inſt.* 359. *Jon.* 48.

So, the Iſſue in Tail, after an Uſurpation in the Life of Tenant in Tail. 2 *Inſt.* 359. *Jon.* 49.

So, the Succeſſor of him in Reverſion, if an Uſurpation be upon the Leſſee, *&c.* of an Eccleſiaſtical Perſon. *Semb. Jon.* 48.

But, if an Infant purchaſes an Advowſon, and an Uſurpation be upon him, he is not within this Statute. 2 *Inſt.* 358.

So the Leſſor himſelf is not within the Statute, tho' the Heir is, when the Uſurpation is upon his Leſſee, *&c.* 2 *Inſt.* 359.

Nor a Man in Remainder, or his Heir. *Ibid.*

So a *Feme Covert* ſhall not have Aid by the Statute, if an Uſurpation be, during the Coverture, to an Advowſon purchaſed by her. *Jon.* 49.

So, if an Uſupation be upon a Biſhop, or other Eccleſiaſtical Perſon, his Succeſſor ſhall not have a *Quare Impedit:* for the Statute aids only upon an Uſurpation in the Vacation, or when the Anceſtor could not have Remedy at the Time of the Uſurpation. *Semb. Jon.* 47, 49. *F. N. B.* 34. *M.*

Vide Quare non admiſit.—Pleader, (3 I. 1, &c.)

(E) Juris Utrum.

When it lies.

A *Juris Utrum* is the higheſt Writ, which a Parſon can have. *F. N. B.* 48. *R.*

And it lies, where the Lands and Tenements of a Rectory are aliened by the Predeceſſor of the Parſon. *Ibid.*

Or are recovered againſt the Predeceſſor by Verdict, or by Confeſſion, or Default, without praying in Aid of the Patron and Ordinary. *F. N. B.* 48. *R.* 49.

So, if the Predeceſſor be diſſeiſed of his Lands or Tenements. *F. N. B.* 49. *A.*

Or any intrudes upon them after the Death of the Predeceſſor. *Ibid.*

So an Abbot, Prior, *&c.* being *Parſon imparſonee* of a Church ſhall have a *Juris Utrum*. *F. N. B.* 49. *E.*

So, a Dean and Chapter, Prebendary, Vicar, *&c.* *F. N. B.* 49. *M. N. O.*

QUARE INCUMBRAVIT.

(A) When it lies.

IF the Plaintiff in a *Quare Impedit* ſues a *Ne admittas* within ſix Months, and afterwards recovers, and before Judgment the Biſhop had inſtituted another to the Church, he ſhall have a *Quare Incumbravit* againſt the Biſhop, and ſhall recover his Preſentation and his Damages. *F. N. B.* 48. *I. O.*

So every Party, who ſues a *Ne admittas*, may have a *Quare Incumbravit* after his Recovery, if the Church be full by the Preſentation of another.

Tho' the Biſhop admits the Preſentee of him, who is found Patron by a *Jure Patronatûs*. *F. N. B.* 48. *H.*

Or,

Or, if the Biſhop admits the Clerk of a Stranger, as well as of the Party to the Writ. *F. N. B.* 48. *L.*

Or admits after ſix Months, as well as before. *F. N. B.* 48. *L.*

Tho' the Biſhop preſents the Clerk of the Plaintiff. *N. N.* 111. *b.*

So a *Quare Incumbravit* lies, if the Biſhop incumbers, when no *Quare Impedit* is pending, and no Debate for the Church. *N. N.* 111. *a.*

Or, before Judgment given. *N. N.* 111. *b.*

(B) How the Proceeding ſhall be.

THE *Quare Incumbravit* is an original Writ, which iſſues out of *Chancery*, and not out of the Court where the Recovery was. *F. N. B.* 48. *G.*

And it ought to be ſued in the County where the Church is. *F. N. B.* 48. *D.*

And in the Court, where the Recovery was, if the Record remains there. *F. N. B.* 48. *F.*

But the King may ſue a *Quare Incumbravit* in *B. R.* tho' the Recovery was in *C. B. F. N. B.* 48. *E.*

So a Common Perſon, if the Record be removed there by Error. *F. N. B.* 48. *F.*

The Proceſs ſhall be an *Alias*, and then a *Diſtringas*. *F. N. B.* 48. *P.*

The Plaintiff in a *Quare Incumbravit* ought to mention his Recovery in his Writ, and Count. *Per Meliorem Opinionem. F. N. B.* 48. *K.*

Or, if there be no Recovery, he may have a ſpecial Count. *N. N.* 111. *a.*

The Defendant may demand *Oyer* of the Recovery mentioned in the Count. *N. N.* 111. *b.*

The Defendant may plead that he did not incumber ſince the Prohibition delivered. *F. N. B.* 48. *N.*

But the Plaintiff in his Count need not ſay, where he recovered. *N. N.* 111. *b.* 112. *b.*

Or, whether he recovered ſince, or before the ſix Months. *N. N.* 111. *b.*

Or, that the Biſhop refuſed his Clerk; for if he incumbered, it imports it.

If the Plaintiff be nonſuit, he may have another *Quare Incumbravit*, and vary his Count. *F. N. B.* 48. *M.*

(C) When it does not lie.

BUT none ſhall have a *Quare Incumbravit* except after a Recovery in a Court. *F. N. B.* 48. *E.*

Nor, if a Church be incumbred before a *Ne admittas* ſued. *F. N. B.* 48. *H.*

So a *Quare Incumbravit* does not lie, if the Biſhop, after the ſix Months, collates by Lapſe. *F. N. B.* 48. *L. N. N.* 112. *a.*

So a *Quare Incumbravit* does not lie, if the Biſhop incumbers pending a Right of Advowſon, tho' the Plaintiff recovers: for the Plaintiff in a Right of Advowſon cannot have a *Ne admittas*; for he recovers the Advowſon only, and not the Preſentation. *F. N. B.* 48. *Q.*

QUARE NON ADMISIT.

(A) When it lies.

AFTER a Recovery in a *Quare Impedit*, if the Biſhop refuſes to admit the Clerk of the Plaintiff, he ſhall have an *Alias*, *Pluries*, and Attachment, or at his Election a Writ of *Quare non admiſit*; in which he ſhall recover Damages only for the Refuſal. *F. N. B.* 47. *C. G.*

And

And it lies, upon a Recovery by the King, as well as by a Common Perſon. *F. N. B.* 47. *C. D.*

And it may be ſued out of *Chancery*. *F. N. B.* 47. *C.*

Or out of *C. B.* which, in Term, is moſt proper. *F. N. B.* 47. *C.*

And it lies againſt a Biſhop, upon a Refuſal by his Vicar General. *F. N. B.* 47. *I.*

So, upon his Refuſal, tho' he afterwards admits him. *F. N. B.* 47. *L.*

So it lies againſt the Guardian of the Spiritualties, upon a Refuſal by the Biſhop then dead. *F. N. B.* 47. *I. Qu.*

Or againſt the Official of the Biſhop. *F. N. B.* 47. *N.*

A *Quare non admiſit* ſhall be ſued in the County where the Refuſal was. *F. N. B.* 47. *F.*

And by a common Perſon in *B.* or, if the Judgment be affirmed in Error, in *B. R.* *F. N. B.* 47. *E.*

But by the King it may be in *B. R.* as well as in *C. B.* tho' no Error brought. *F. N. B.* 47. *D.*

The Writ ought to recite the Recovery. *F. N. B.* 47. *C.*

But it will be a good Plea for the Biſhop, that the Church is litigious. *F. N. B.* 48. *B.*

That the Church is full of another Preſentation by any one not Party to the Record. *F. N. B.* 47. *K.*

That he himſelf preſented by Lapſe. *F. N. B.* 47. *M.*

That he has admitted his Clerk. *F. N. B.* 47. *H.*

So it does not lie againſt an Archdeacon for Refuſal of Induction; for the Plaintiff ſhall cite him into the Spiritual Court, or have an Action upon the Caſe. *F. N. B.* 47. *H.*

Nor, upon a Recovery of a Preſentation to a Donative; for he ſhall have a Writ to the Sheriff to put him into Poſſeſſion. *F. N. B.* 48. *A.*

Or a Writ to him, who ought to inſtall, *&c.* the Preſentee to the Donative, to put him into Poſſeſſion. *F. N. B.* 48. *C.*

QUARE OBSTRUXIT.

(A) The Writ of Quare obſtruxit.

A *Quare obſtruxit* is a Writ, which lies againſt him who obſtructs the Plaintiff's Way, to which he has a Right in the Land of another. *Nom. Verb. Qu. Obſtruxit.*

And it lies in the Nature of a Writ of *Right Cloſe* directed to the Lord, or Bailiffs of a Manor of *Antient Demeſne*. *F. N. B.* 11. *I. L.*

QUARTER SESSIONS.

Vide Juſtices of Peace, (D. 1, &c.)

QUÆ EST EADEM.

Vide Pleader, (E. 31.)

QUEEN.

Vide Action, (B. 2—C. 2.)—*Justices*, (K. 1, &c.)—*Roy*, (F. 1, 2, 3.)

QUEESTATE.

Vide Pleader, (E. 23, 24.)—*Temps*, (G. 13.)

QUEM REDDITUM REDDIT.

Vide Fine, (F.)

QUESTION.

Vide Parliament, (G. 25, &c.)

QUIA DOMINUS REMISIT CURIAM.

Vide Droit, (C. 2.)

QUID JURIS CLAMAT.

Vide Fine, (F.)

QUIETUS.

WHEN an Accountant in the *Exchequer* is acquitted, he shall have his *Quietus*.

As to a Sheriff's *Quietus*, *Vide Viscount*, (G. 4.)

QUI TAM, &c.

Vide Action upon Statute, (E. 1, &c.)—*Information*, (A. 3.)

QUIT-RENT.

Vide Rent, (C. 2.)

QUOD EI DEFORCEAT.

(A) When it lies.

(A. 1.) By the Common Law.

BY the Cuſtom of ſome Places a *Quod ei deforceat* lies at Common Law; as, in *Wales*. 2 *Inſt*. 350. *R. Jon.* 381.

So, by the Common Law, if a Recovery was againſt the Husband in a Real Action by Render of the Husband, his Wife might recover her Dower. 2 *Inſt*. 349.

Yet in the ſuperior Courts no *Quod ei deforceat* lies by the Common Law. 2 *Inſt*. 350. *Jon*. 381.

(A. 2.) By the *St. W*. 2. 4.

But now, by the *St. W*. 2. 4. If a Recovery be againſt the Husband by Default, his Wife ſhall have a *Quod ei deforceat*: and if the Tenant cannot ſhew, that he had Right to the Tenement at the Time of the Recovery, the Wife ſhall have her Dower. *Vide* 2 *Inſt*. 349.

QUOD PERMITTAT.

(A) When it lies.

A *Quod Permittat* lies againſt him, who diſturbs another in his Right to Common of Paſture, Turbary, Piſcary, Aqueduct, Way, Fair, Market, or other Privilege. *F. N. B*. 123. *F. H.*

As, for diſturbing in his *Eſtovers*. *F. N. B*. 123. *H.*

Or diſturbing the Villeins of a Lord in doing Suit at his Mill, where they ought to do it by Preſcription. *F. N. B*. 123. *M.*

Or diſturbing in having Water to his Fountain, where he ought to have it. *F. N. B*. 124. *A.*

Or in his Paſſage *ultra Aquam*. *Ibid.*

In his free Foldage. *Ibid.*

In the Erection of Ladders in the Soil of another, for repairing an Houſe contiguous. *Ibid.*

In his Corody. *Ibid.*

So a *Quod Permittat* lies for abating a Nuſance to the Freehold of another. *F. N. B*. 124. *H. Vide Action upon the Caſe for a Nuiſance*, (D. 2.)

(B) By whom it lies.

A *Quod Permittat* lies upon a Diſturbance, or *Diſſeiſin* to the Plaintiff, or his Anceſtor; but in no other Degree. *F. N. B*. 123. *H.*

And when it is brought upon a *Diſſeiſin* to the Anceſtor, it is in the Nature of a *Mort d'anceſter*. *F. N. B*. 123. *K.*

So an Abbot, *&c.* might have had it, upon a *Diſſeiſin* to his Predeceſſor. *F. N. B*. 123. *H. L.*

A *Quod Permittat* lies by Tenant in Fee, or in Tail. *F. N. B*. 124. *B. C.*

So it lies by the Heir, or Feoffee of him to whom a Nuſance is done. *F. N. B*. 124. *H*. 125. *A.*

So

So a *Quod Permittat* lies againſt the Heir, or Feoffee of him, who did a Nuſance to the Freehold of another, if the Nuſance be continued. *F. N. B.* 124. *H.* 125. *A.*

(C) When it does not lie.

BUT a *Quod Permittat* does not lie for reaſonable *Eſtovers* in a Wood, *&c.* for which an Aſſiſe of *Novel Diſſeiſin* is given by the *St. W.* 2. 26. *F. N. B.* 124. *A.*

(D) How the Proceeding in it ſhall be.

(D. 1.) By *Juſticies* in the County.

A *Quod Permittat* is *Vicontiel* before the Sheriff by *Juſticies* in his County Court; or it may be ſued in *C. B.* *F. N. B.* 123. *G.*

(D. 2.) By Writ, in *C. B.*

A *Quod Permittat* by Writ in *C. B.* lies againſt a Diſſeiſor, or Diſturber of his Common, Way, *&c.* upon a *Diſſeiſin* to the Plaintiff himſelf, or his Anceſtor. *F. N. B.* 123. *H.*

If the Common be in the Land of a Perſon certain, he need not mention in his Writ the Number of Cattle. *F. N. B.* 123. *G.*

(D. 3.) The Proceſs.

The Proceſs in a *Quod Permittat* is Summons, Attachment, and *Diſtringas.* *F. N. B.* 124. *F.*

And if *Nichil* be returned upon the Summons, a *Capias* ſhall go. *F. N. B.* 124. *F.*

QUO JURE.

(A) When it lies.

A *Quo Jure* is a Writ of Right in it's Nature, and lies by the Lord of a Vill, or of a Waſte, or by any ſeiſed in Fee, againſt him who claims Common in his Land. *F. N. B.* 128.

(B) How the Proceeding ſhall be.

THE Proceſs in a *Quo Jure* is Summons, Attachment, and Diſtreſs. *F. N. B.* 128. *L.*

And, if the Defendant makes Default after Appearance, the Grand Diſtreſs ſhall go inſtead of a *Petit Cape.* *F. N. B.* 128. *L.*

The Defendant ſhall make his Defence, ſhall make Title to the Common, ſhall alledge Seiſin of it, and the *Eſplees*, and *quod tale ſit Jus ſuum offert, &c.* as the Demandant does in a Writ of Right. *F. N. B.* 128. *I.*

To the Title alledged by the Defendant, the Plaintiff ſhall make Defence, and ſhall defend againſt the Seiſin alledged by the Defendant, and ſhall join the *Miſe* upon the mere Right, or by Battle. *F. N. B.* 128. *I.*

QUO WARRANTO.

(A) When it lies.

A *Quo Warranto* is in the Nature of a Writ of Right for the King, againſt him who uſurps, or claims any Franchiſes or Liberties, to ſay by what Authority he claims them. 2 *Inſt.* 282. 9 *Co.* 28. *a.* *Yel.* 191.

So the King may have an Information in the Nature of a *Quo Warranto*.

Or a Writ of Inquiry out of the *Exchequer*. *Co. Ent.* 530. *b.*

A *Quo Warranto* lies for all Franchiſes,

As, for Waifs, Eſtrays, *&c.* *Co. Ent.* 528, 541, 544.

Goods and Chattels of Felons, Deodands, *&c.* *Co. Ent.* 528, 549.

Fines, Amerciaments, Iſſues, *&c.* *Co. Ent.* 551. *b.* 561. *a.*

A Park, Warren, *&c.* *Co. Ent.* 561.

So, for Wreck of the Sea, *&c.* 2 *Rol.* 205. *l.* 35.

Or, for taking Laſtage or Ballaſtage of Ships. 1 *Sid.* 86.

So it lies for Franchiſes, which cannot be ſeiſed into the King's Hands; for the Party may be ouſted of them.

As, for a Court Baron. *Quo W.* 14. *Treby's Argument.* *Per* 3 *J.* 2 *dub.* 2 *Cro.* 259. *Yel.* 190.

A Court-Leet, or Borough Court. *Co. Ent.* 527. *b.* 544.

A Fair, Market, Toll, *&c.* *Co. Ent.* 527. *b.* 544. 561. *a.*

[Information in the Nature of *Quo Warranto* lies againſt any one claiming an *excluſive* Ferry over a publick River, but not for taking Money of Paſſengers. *Rex* v. *Reynell*, *H.* 15 *G.* 2. *Str.* 1161.]

So it lies for claiming to be a Corporation. *Co. Ent.* 527. *b.*

To chuſe Bailiffs, or other Officers. *Co. Ent.* 527. *b.* 537. *b.*

Coroner, Conſtable, Clerk of a Market, Juſtice, *&c.* *Co. Ent.* 528. *a.* 537. *b.* 551. *b.*

[For exerciſing the Office of Steward of a Court-Leet, but not of a Court-Baron. *Rex* v. *Hulſton*, *H.* 11 *G.* *Str.* 621.]

[It lies for the Office of Conſtable. *Rex* v. *Goudge*, *M.* 18 *G.* 2. *Str.* 1213.]

So it lies upon a Claim of Exemptions; as, to be exempt from the Government of the Mayor, Juſtices, *&c.* *Co. Ent.* 528. *a.*

So a *Quo Warranto* lies againſt him, who abuſes his Franchiſes, or Liberties. 2 *Inſt.* 496.

So it lies upon a Claim of the Correction of Others: as, to have the Aſſiſe of Bread and Beer, Weights or Meaſures. *Co. Ent.* 528. *a.*

To have a Priſon, Power of arreſting, *&c.* *Ibid.*

Puniſhment of Foreſtallers, or other Offenders. *Ibid.*

Pillory, Tumbrel, *&c.* *Co. Ent.* 551. *b.*

[It lies where any new Juriſdiction, or a publick Truſt, is executed without Authority, though it is no Uſurpation upon any Franchiſe of the Crown. *Rex* v. *Nicholſon*, *P.* 6 *G.* *Str.* 299. *Rex* v. *Boyles*, *T.* 3 *G.* 2. *Str.* 836. *Ld. Raym.* 1559.]

(B) When not.

BUT by the *St.* 18 *Ed.* 1. *of Quo Warranto*, Every one who had a Franchiſe before the Time of *R.* 1. and can prove his Enjoyment afterwards, by Verdict, or other Means, his Franchiſe, *&c.* ſhall be confirmed.

And therefore, if it appears upon a *Quo Warranto*, that the Defendant has enjoyed Time whereof, *&c.* Franchiſes, *&c.* which lie in Preſcription, or thoſe which lie in Charter, by Grant within the Time of *R.* 1. or, if granted before, if they be confirmed or allowed ſince, he ſhall not be ouſted of them. 2 *Inſt.* 495. 9 *Co.* 28.

[It does not lie for erecting a Warren. *Rex* v. *Lowther*, *M.* 12 *G.* *Str.* 637. 2 *Ld. Raym.* 1409.

[It does not lie for a Forfeiture by Non-attendance. *Ld. Bruce's Caſe* *M.* 2 *G.* 2. *Str.* 819.]

[The Court will not grant Information *Quo Warranto* for making a Rabbit-Warren, nor for ſetting up a Fair, the Remedy is, by Application to Attorney-General, who may grant it. *Ibotſon's Caſe*, *P.* 9 *G.* 2. *B. R. H.* 261.]

[Nor for holding a Court-Leet in a Manor; for it is a private Right, and may be had in a civil Action. *Rex* v. *Cann*, *T.* 10 & 11 *G.* 2. *Andr.* 14.]

[Nor where two Sets of Churchwardens are ſworn in. *Rex* v. *Dawbeny*, *M.* 17 *G.* 2. *Str.* 1196.]

[Nor where the *Defect* of Defendant's Title is ſtale, as of twenty-nine Year's ſtanding, and has never been queſtioned before. *Rex* v. *Stephens*, *M.* 31 *G.* 2. 1 *B. M.* 433.]

(C) The Proceeding in a Quo Warranto.

(C. 1.) In what Court it ſhall be.

BY the *St.* made 6 *Ed.* 1. (but proclaimed 30 *Ed.* 1. and therefore printed of that Year, 2 *Inſt.* 279.) All Perſons ought to enjoy their Franchiſes, if not uſurped over, 'till the coming of the King or Juſtices in *Eyre*.

And thereby, and by the *St.* 18 *Ed.* 1. When Juſtices in *Eyre* were in being, a *Quo Warranto* lay before them. 2 *Inſt.* 498.

(C. 2.) What Proceſs.

By the *St.* 6 *Ed.* 1. (printed 30 *Ed.* 1.) The Sheriff ſhall make Proclamation forty Days before the *Eyre*, that all appear to ſhew *Quo Warranto* they claim their Franchiſes; and if any makes Default, his Franchiſe ſhall be ſeiſed into the King's Hands, 'till he appears, *Nomine Diſtrictionis*, and then replevied, if he anſwer immediately: If he excepts, that he ought not to anſwers without an Original, it ſhall be inquired, Whether he himſelf uſurped; and if found ſo, he ſhall anſwer immediately without an Original: If he found that his Anceſtor died ſeiſed of the Franchiſe, an Original ſhall be ſued in this Form; *Rex &c. Sum' per bonos Summonitores A. quod ſit, &c. oſtenſurus Quo Warranto tenet, &c.*

If *A.* appears upon the Original he ſhall anſwer, and Replication and Rejoinder ſhall be made. By the *ſame Statute.*

If he does not appear, nor is eſſoined, it ſhall be as in *Eyre.* By the *ſame Statute.*

And therefore, the firſt Proceſs againſt the Defendant in a *Quo Warranto* is Summons. 1 *Sid.* 86.

If he does not appear thereon, Judgment ſhall be for Seiſure. 1 *Sid.* 86. 2 *Rol.* 46.

So, in an Information in the Nature of a *Quo Warranto*, the firſt Proceſs ſhall be a *Venire facias*. *Co. Ent.* 527. *b.* 1 *Sid.* 86.

If the Party does not appear the ſame Term, he ſhall loſe his Franchiſe for ever. 2 *Inſt.* 282.

If he does not appear upon the *Venire facias*, there ſhall be a *Diſtringas*. 1 *Sid.* 86. 1 *Sal.* 374.

If he appears, his Franchiſes ſhall be replevied of Right. 2 *Inſt.* 282.

If an Information be againſt a Corporation, the firſt Proceſs ſhall be Summons, and afterwards *Diſtringas in Infinitum*. *Carth.* 503.

And fifteen Days are ſufficient between the *Teſte* and Return. *R. Carth.* 503.

And if there be no Appearance upon the *Diſtringas*, the Iſſues may be eſtreated. *R. Carth.* 503.

So, upon an Inquiſition returned into the *Exchequer* of an Uſurpation of Franchiſes, a *Diſtringas* ſhall iſſue againſt the Uſurper, who thereupon may appear and plead. *Co. Ent.* 531.

If

If an Uſurpation be by a Corporation, Proceſs ſhall be againſt them by their Corporate Name. *Q. War.* 16. *Treby's Argument. Vide Poſt*, (C. 3.)

If it be for uſurping to be a Corporation, it ſhall be againſt the Natural Perſons who uſurp, or by a Name which comprehends them. *Q. War.* 4. 15. *Treby's Argument.—Quo W.* 69, *Pollexfen's Argument. Vide Poſt*, (C. 3.)

(C. 3.) Information.

The general Proceeding is by Information for the King, by his Attorney-General, againſt any Uſurper of Franchiſes, *&c.* to ſhow *Quo Warranto* he uſes them. *Co. Ent.* 527. *b.*

So againſt him, who exerciſes a Power unlawfully: As, if a Mayor, *&c.* admits to Freedom Perſons who have no Right; for, there is no other Remedy. 1 *Sal.* 374.

By the *St.* 9 *Ann.* 20. An Information in the Nature of a *Quo Warranto* may be granted by Leave of Court, at the Relation of any deſiring to ſue, againſt any, who intrudes into, uſurps, unlawfully holds, or executes any Offices, or Franchiſes of a Corporation.

[Information on this Statute lies not againſt a Corporation as a Body, but only againſt Individuals uſurping Franchiſes in a Corporation. Information againſt a Corporation is always by the Attorney-General. *Rex* v. *Carmarthen, M.* 33 *G.* 2. 2 *B. M.* 869.]

And where the Rights of ſeveral Perſons may be properly tried in one Information, the Court may order One again Several.

[After Rules are made abſolute for four Informations againſt four Defendants, the Court may direct that there ſhall be only one Information againſt all the four Defendants. *Rex* v. *Foſter, P.* 31 *G.* 2. 1 *B. M.* 573.]

If an Information be for uſing a Franchiſe by a Corporation, it ought to be againſt the Corporation. 2 *Rol.* 115.

If for uſurping to be a Corporation, it ought to be againſt the particular Perſons. 2 *Rol.* 115.

[If it does not appear whether a Court, at which Election was made, was competent or not, the Court will grant Information; or where any other material Points are doubtful. *Rex* v. *Latham. P.* 4 *G.* 3. 3 *B. M.* 1485.]

[Whether *B. R.* can grant it on the Application of a private Perſon, for uſurping a Market upon the Crown. *Dub. Rex* v. *Marſden, M.* 6 *G.* 3. 3 *B. M.* 1812.]

[But the Court will not grant it for *encouraging and promoting* a Market. *Ibid.*]

[After twenty Years unimpeached Poſſeſſion of a corporate Franchiſe the Court will not grant Rule to oblige the Perſon to ſhew by what Right. Under that Time it muſt depend on Circumſtances, and Length of Time will be of Weight. *Winchelſea Cauſes. M.* 7 *G.* 3. 4 *B. M.* 1962. *Rex* v. *Rogers, H.* 10 *G.* 3. 4 *B. M.* 2523.]

[The twenty Years reckoned from the Day of making the Rule abſolute, *Ibid.*]

The Court will not grant it on Oath of Belief of Non-reſidence, Defendant ſwearing to his Reſidence, and paying Scot and Lot, and the Rule may be diſcharged with Coſts. *R.* v. *Wardroper. M.* 7 *G.* 3. 4 *B. M.* 1963. 2024.]

[The Court will not grant it if the Informant hath acquieſced in the Uſurpation, and is Partaker of the Guilt, or ſhews no Right of himſelf or others, which depends on invalidating Defendant's Title, or the Objection cured by long ſubſequent Conduct, or the Conſequence prove fatal to the Corporation which has been drawn in to Acts by the Informant which he would now turn to their Deſtruction. *Rex.* v. *Dawes. Rex* v. *Marten, H.* 7 *G.* 3. *T.* 7 *G.* 3. 4 *B. M.* 2022, 2120].

(C. 4.) Plea.

By the *St.* 9 *Ann.* 20. The Defendant ſhall plead the ſame Term the Information is exhibited by that Statute, unleſs the Court gives further Time.

And the Defendant may diſclaim the Liberties mentioned in the Information. *Co. Ent.* 527. *b.*

Or diſclaim as to Part, and juſtify as to other Part. *Co. Ent.* 529. *b.*

After Plea, the Defendant may amend his Plea, paying Coſts, before Demurrer joined. 1 *Sid.* 54.

[At any Time before Trial, the Court will give leave to Defendant to withdraw his Plea and plead *de novo*, on Terms. *Rex* v. *Blatchford*, *H.* 8 *G.* 3. 4 *B. M.* 2147.]

So the Defendant in a *Quo Warranto* may by Plea ſhew his Title to the Liberties claimed.

And in ſuch Caſe he ought to ſhew a full Title to himſelf. 9 *Co.* 24. *b.* *R.* 2 *Leo.* 28. *Hard.* 456.

As, if the King grants *Bona Felonum*, or other Franchiſes, which lie in Charter, to an Abbot, *&c.* whoſe Poſſeſſions come back to the Crown, and the King re-grants *Bona Felonum*, *&c. adeo plene prout Abbas habuit*; in a *Quo Warranto* againſt the Grantee, the Defendant ought by his Plea to ſhew the firſt Grant to the Abbot, the Re-union in the Crown, and afterwards the Re-grant, *&c.* *R.* 9 *Co* 26. *a.* *Per Popham.* 2 *J. cont. Mo.* 297.

If he pleads the King's Charter, he ought not to plead, that he granted and confirmed; for that is double. 1 *Sid.* 86.

If he pleads a Grant of an Office, he ought to ſhew it to be an antient Office. *Semb.* 1 *Sid.* 86.

He ought to alledge the Thing done to be appurtenant to his Office. 1 *Sid.* 86.

If he pleads a Grant to an Abbot, *&c.* he ought to ſhew, for what Eſtate. *R. Mo.* 297.

If he ſhews a Privilege to him as a Copyholder, he ought to plead it in him, who has the Freehold at leaſt. *R. Yel.* 191.

But it is ſufficient, that the Plea be as general as the Information; as, if a *Quo Warranto* be for uſing a Maket, Toll, *&c.* it is ſufficient to make Title to the Market, Toll, *&c.* without ſaying, how much the Toll was. *Pal.* 81.

If he claims a Franchiſe as appendant to a Manor which came to the King by the Attainder of *B.* and afterwards was granted to him; it is ſufficient to ſay, that *B. fuit debito Modo attinctus.* *Semb.* 3 *Leo.* 72.

So, if he claims Franchiſes by Preſcription, and others by Charter, he may conclude *eo Warranto utitur*, generally; for it ſhall be taken *diſtributivè*. *R. Mo.* 398.

[If the Affidavit annexed to a Plea in Abatement, has no Title, the Plea ſhall be ſet aſide. *Rex* v. *Jones*, *H.* 15 *G.* 2. *Str.* 1161.]

(C. 5.) Judgment.

In a *Quo Warranto*, there ſhall be Judgment immediately for the King, if the Defendant diſclaims, *Co. Ent.* 527. *b.*

If the King cannot have the Franchiſe claimed, Judgment ſhall be that the Defendant be ouſted of it. *Co. Ent.* 527 *b.* 530. *Per Holt. Sho.* 280 4 *Mod.* 58. 2 *Mod. Ca.* 234 2 *Cro.* 260.

So, in an Information for uſing an Authority to which he has no Right. 1 *Sal.* 374.

If a Franchiſe, or Liberty, which may ſubſiſt in the Crown, be forfeited, the Judgment in a *Quo Warranto* for it, either for ſeiſing, or ouſting, will be proper. *Per Holt. Sho.* 280.

If the Franchiſe was created by the King, and may ſubſiſt, *&c.* the Judgment for Seiſure will be the moſt proper. *Sho.* 280.

So Judgment ſhall be, for Seiſure of the Franchiſe into the King's Hands, in a *Quo Warranto* for a Franchiſe not granted by the King. 1 *Sal.* 374.

If Judgment be for Seiſure of the Franchiſe, all Franchiſes incident, or ſubordinate, granted by the ſame Charter, are alſo forfeited. *R. Pal.* 82.

So, by the *St.* 9 *Ann.* 20. If the Defendant, on Information purſuant to that Statute, be found guilty of Uſurpation, Intruſion into, unlawful Holding, or executing any Offices or Franchiſes there named, the Court may give Judgment of *Ouſter*, as well as Fine, and Coſts ſhall be recovered on either Side.

If the Defendant be found duly elected, but not ſworn into the Office, there ſhall be Judgment of *Ouſter*. 2 *Mod Ca.* 234. [*Mayor of Penryn's Caſe, P.* 10 *G. Str.* 582. *Affirmed in Parliament.*]

And no *Mandamus* lies to ſwear, 'till that Judgment be reverſed. 11 *Geo.* 1. 2 *Mod. Ca.* 334.

So, if the Attorny-General confeſſes the Defendant's Plea, there ſhall be Judgment for the Allowance of the Franchiſes. *Co. Ent.* 535. *b.* 537. *a.* 549, 564.

But a Confeſſion by the Attorny-General does not bind the King, where the Matter is not private, but concerns the Publick. 1 *Rol.* 112.

So a Confeſſion by the Attorny-General, if it be not after a Plea upon Record, does not warrant the Court to give Judgment againſt the King. *Semb. Sav.* 19.

So a Confeſſion by the Attorny-General does not conclude the King, or the Court, in a Point of Law; but only as to the Fact. *R.* 2 *Bul.* 296.

[If Defendant confeſſes Uſurpation for Part of the Time only, and from thence inſiſts on Election, there cannot be Judgment of *Ouſter*, but only *capiatur pro Fine. Rex* v. *Biddle*, *T.* 6 *G.* 2. *Str.* 952.

[If a Mayor ſuffers Judgment to go againſt him by Default, tho' his whole Expences are offered to be paid, whereby the Rights of others are affected. Judgment may be ſet aſide, and another Perſon admitted to defend in his Name indemnifying him. *R.* v. *Dawes*. *H.* 9 *G.* 3. 4 *B. M.* 2277.]

[The Defendant muſt ſhew a Title, nor need the King traverſe any Thing but the Title ſet up: if one material Iſſue is found for the Crown, the Crown muſt have Judgment. *Rex* v. *Leigh*, *H.* 8 *G.* 3. 4 *B. M.* 2143.]

(C. 6.) The Effect of the Judgment.

The Judgment in a *Quo Warranto* is final: for it is in the Nature of a Writ of Right. 1 *Sid.* 86.

And therefore, if Judgment be againſt the King, the King ſhall be for ever bound, as to the Thing adjudged. 1 *Rol.* 112.

So, if Judgment be againſt the King upon a Confeſſion by the Attorny-General, it ſhall never afterwards be re-examined for a Matter in Fact; for as to the Fact it is concluſive, tho' not as to the Law. *Hard.* 129.

But upon a Judgment againſt a Corporation for ſeiſing of their Liberties, the Corporation ſhall not be ſeiſed, or diſſolved. 4 *Mod.* 58.

And there cannot be Judgment againſt a Corporation but in their Politick Capacity. 4 *Mod.* 58.

(C. 7.) Execution.

After Judgment for Seiſure of Liberties into the King's Hands, a Writ of Seiſure ſhall iſſue to the Sheriff. *Co. Ent.* 539. *b.*

And thereon the Sheriff ſhall return a Seiſure. *Co. Ent.* 540. *b.*

RAPE.

Vide Appeal, (A. 3.)—*Justices*, (S. 2.—Y. 12.)

RATIONABILIBUS DIVISIS.

Vide Droit, (L.)

RAVISHMENT OF WARD.

Vide Gardian, (H. 3.)

RAZURE.

Vide Abatement, (H. 1.)—*Amendment*, (T. 6.)—*Fait*, (F. 1.)

READING.

Reading a Deed.

Vide Fait, (B. 2.)

Reading a Bill.

Vide Parliament, (G. 12, 14, 15.)

REBELLION.

Commission of Rebellion.

Vide Chancery, (D. 5.)

REBUTTER.

Vide Garranty, (K. 3.)—*Pleader*, (K.)

RECAPTION.

Vide Pleader, (3 K. 32.)

RECEIPT.

(A) Receipt; when allowed.

(A. 1.) Of a Termor for Years.

RECEIPT is, when, in an Action between Others, a Stranger prays to be received to defend his Right, or Intereſt.

As, by the *St. Gloc.* 11. (which is the firſt Statute which gives Receipt.) 2 *Inſt.* 323. If the Tenant of the Freehold is impleaded by Colluſion to ouſt a Termer of his Term, he, before Judgment, may challenge his Term.

And therefore, where the Tenant of the Freehold makes Default, or renders the Land, or ſays Nothing, he who has a Term by Deed, may pray to be received to defend his Intereſt. 2 *Inſt.* 323.

So, Tenant by Statute-Merchant, Staple, *Elegit*, *&c.* 2 *Inſt.* 323.

So, if the Tenant vouches *A.* who enters into Warranty, and afterwards makes Default. 2 *Inſt.* 324.

So, a Tenant for Years may be received in Dower, tho' the Writ be againſt him and another. *R.* 3 *Leo.* 168.

And therefore he, who prays to be received before Judgment, ſuggeſts a Colluſion between the Plaintiff and Defendant. *Rob. Ent.* 253, *R.* that it ought to be ſuggeſted; but all, except *Anderſon*, agreed, that it is not traverſable. *R.* 3 *Leo.* 168, 9.

But a Tenant for Years ſhall not be received upon the *St. of Gloc.* 11. for faint Pleading of him who has the Freehold. 2 *Inſt.* 323.

(A. 2.) Of him in Reverſion or Remainder.

So, by the Common Law, if Tenant for Life, or Years, by Colluſion, and to the Fraud of him in Reverſion, permitted himſelf to be impleaded, and would not vouch him, as he might, He in Reverſion without being vouched might appear and enter into Warranty for Defence of his Right. 2 *Inſt.* 344.

And now, by the *St. W.* 2. 3. If Tenant in Dower, by Curteſy, for Life, or in Tail, makes Default, the Heir, or He in Reverſion, ſhall be admitted to anſwer, if he comes before Judgment. 2 *Inſt.* 345.

So, if a Leaſe be to *A.* and *B.* and upon a *Præcipe* againſt *A.* alone, he makes Default, He in Reverſion ſhall be received. 2 *Inſt.* 345.

So, tho' there be a *meſne* Eſtate for Life between the Tenant who makes Default, and him in Reverſion. 2 *Inſt* 346.

So, if the Reverſion be granted for Life to *B.* who does not pray to be received, the Reverſioner in Fee may. 2 *Inſt.* 346.

So, if the Tenant ſurrenders to him in Reverſion, tho' he has not properly a Reverſion, he ſhall be received. 2 *Inſt.* 346.

So he ſhall be received, where the Tenant pleads *Nil dicit*, or departs in Deſpite of the Court. 2 *Inſt.* 346.

So, if the Tenant be only of a Rent, by Equity, the Reverſioner ſhall be received. 2 *Inſt.* 346.

So by the *St.* 13 *R.* 2. 17. He in Reverſion who prays to be received ſhall find Surety of the Iſſues of the Lands in Demand.

But the King cannot be received; for he cannot be a Tenant, or *in Loco tenentis.* 2 *Inſt.* 346.

Nor he in Reverſion after an Eſtate Tail General, or Special; for the Statute ſhall be underſtood of Tenant in Tail after Poſſibility only. 2 *Inſt.* 345. 1 *And.* 33. 4 *Leo.* 51.

So a Reverſion ought to be veſted in him; for a Condition, or Poſſibility, is not ſufficient. 2 *Inſt.* 345.

So,

So, regularly, a Reverſioner ſhall not be received, where no Reverſion is in him at the Time. 2 *Inſt.* 346

So, if the Tenant prays in Aid of him in Reverſion, who refuſes, he ſhall not be afterwards received. 2 *Inſt.* 345.

(A. 3.) Of a Wife upon Default of her Huſband.

So, by the *St. W.* 2. 3. If the Huſband be abſent, or will not defend, or will render againſt the Will of his Wife, *ſi Uxor venerit ante Judicium parata petenti reſpondere et Jus ſuum Defendere admittatur.*

And therefore, in a Real Action againſt Huſband and Wife, if the Huſband by Default, or Reddition, loſes the Eſtate of the Wife, ſhe ſhall be received. 2 *Inſt.* 343.

So, upon a *Nient dedire*, or *Nil dicit* by the Huſband. 2 *Inſt.* 343.

So upon faint Pleading by the Huſband. *Cont. per Priſot. R. acc.* 8 *E.* 2. *Cont. per Coke*, 2 *Inſt.* 343. (*Acc. Cro. El.* 826.)

So, if the Huſband makes Default at the Aſſiſes, tho' Judgment is not given upon his Default without a Trial. *R.* 2 *Leo.* 9.

So, upon a Default by the Huſband to the *Petit Cape.* 1 *And.* 18.

So, if the Huſband pleads falſely; as Non-tenure. *R. Cro. El.* 826.

And it is not a good Counterplea, that the Huſband and Wife, after Default, levied a Fine to a Stranger. *R.* 1 *And.* 18.

But if the Wife be not impleaded with her Huſband, the Wife ſhall not be received. *R. Mo.* 242. 1 *Leo.* 86.

Yet He in Remainder, or Reverſion, may be received and plead Joint-tenancy, *&c.* in Abatement. *R. Mo.* 242. 1 *Leo.* 86.

(B) How the Proceeding ſhall be upon a Receipt.

(B. 1.) If the Wife be received.

IF the Wife be received, there need not be a Declaration *de novo*, for ſhe was Party to the Suit before. *R. Cro. El.* 826.

(B. 2.) If He in the Reverſion.

But where He in Reverſion, not Party to the Suit, is received, there ſhall be a Declaration *de novo*. *Cro. El.* 826. *Cont. per Dyer*, the other *J. acc. Mo.* 29. *R. cont. per all the J.* for, *venit paratus reſpondere* to the Demandant, and therefore he ought to anſwer immediately without Imparlance; for he takes Notice of the Demand. *Mo.* 34.

(B. 3) How the Party ſhall plead.

Vide Abatement. (I. 31.) After Receipt of a Tenant for Years, he ſhall be allowed to plead for the Safety of his Intereſt. 2 *Inſt.* 324.

Tenant for Years ought to traverſe the Title of the Demandant, or plead in Bar to it. 2 *Inſt.* 323. 4.

(B. 4.) Judgment by, or againſt Tenant by Receipt.

Tenant for Years cannot be received after Judgment. 2 *Inſt.* 323.

If he be received before Judgment, and his Plea allowed, Judgment ſhall be only, that Execution for the Demandant be ſuſpended during the Term. 2 *Inſt.* 324.

And tho' there be ſuch Judgment, he ſhall pay his Rent, ſhall be ſubject to Waſt, *&c.* 2 *Inſt.* 323.

Receipt of Parcel.

Vide Abatement, (H. 51.)

Court of Receipt in Exchequer.

Vide Courts, (D. 4.)

RECEIVER.

Vide Accompt, (A. 4. E. 5.)

RECITAL.

Vide Evidence, (B. 5.—*Fait*. E. 1.)—*Grant*, (G. 10.)—*Parols*, (A. 19.)—*Pleader*, (C. 9.)

——of a Statute.

Vide Action upon Statute, (G.—H.—I.— *Pleader*, 2 S. 2.)

RECOGNISANCE.

Vide Bail, (O.—P.—*Dett*, A. 3.)—*Enfant*, (B. 4.)—*Forceable Entry*, *D.* 20, &c 26, 27.)—*Justices of Peace*, (B. 5, 6, 7, 8.)—*Obligation*, (K.)—*Parliament*, (L. 47.)—*Pleader* (2 W. 10, 34, 35.— 3 L, 16)—*Statute Staple*, (B.)

RECOMPENCE.

Vide Dismes, (E. 10, 17.)

RECORD.

(A) What is Matter of Record.

A Record is a Memorial of a Proceeding or Act of a Court of Record, entred in a Roll of Parchment for the Preservation of it. *Co. L.* 117. *b.* 260. *a.*

[A Roll is not a Record till it is put in the Bundle. *Bolton* v. *Jeffs*, *H.* 5 *G. Fort.* 355.]

[An Affidavit read and filed becomes a Record of the Court, and cannot be taken off the File. *Beal* v. *Lanstaff*, *H.* 8 *G.* 3. 2 *Wils.* 371.]

[If Record is lost, the Court may order a new Entry. *King qui tam*, v. *Bolton*, H. 5 *G.* *Needham* v. *Grano*, *P.* 9 *G.* *Str.* 141.]

[If Writ of Inquiry is executed, Costs taxed, but final Judgment not entered, and it is lost, the Court may order new Writ of Inquiry, and Inquisition to be made according to the Sheriff's Notes, and the Costs to be indorsed according to Commitment-Book. *Bean* v. *Elton*, *T.* 10 *G.* 2. *Str.* 1077. *Andr.* 12.]

[An Extent and Inquisition being lost, may, on Motion, be new ingrossed from the Sheriff's Minutes signed by the Jury. *Rex* v *Blundel*, *in Sc. M.* 21. *Bunb.* 88. *N. B.* Defendant consented, *& dissent*. *Mountague* B.]

[So, a new *Poſtea* may be made from the Record above, and the Minutes in the Aſſociate's Book. *Ibid. Dayrell* v. *Bridge, H.* 20 G. 2. *Str.* 1264.]

[After Verdict, *Record* of *Niſi prius*, and Writ of *Habeas Corpus Jurat.* loſt, new Record and Writ may be made out, and Verdict returned. *Barnes* 466.

[If Judgment-Roll is carried in and docquetted, and then loſt, a new Roll may be filed, on Motion, many Years afterwards. *Evans* v. *Thomas, P.* 2 G. 2. *Str.* 833.]

(B) How tried.

A Record is of ſo high a Nature, that it can be tried only by itſelf. *Co. L.* 117. *b. Vide Trial*, (A.)

If Iſſue be upon *Nul tiel Record*, where the Record is alledged in the ſame Court, Day ſhall be given for the Inſpection.

If there was ſuch a Record at the Time of the Plea, the Iſſue ſhall be for the Plaintiff, tho' there be a Diſcontinuance entred upon the Record before the Day given for producing it. *R.* 1 *Sal.* 329.

But if *Nul tiel Record* be pleaded as to a Judgment, Outlawry, *&c.* and before the Day given for producing the Judgment, *&c.* it is reverſed by Error; the Iſſue ſhall be for the Defendant; for by the Reverſal it is annulled *ab Initio.* 1 *Sal.* 329.

(C) What will be a material Variance.

Vide Pleader. (3 B. 13.) IF a Man pleads *Nul tiel Record*, and there be a material Variance between the Record itſelf, and the Record pleaded, it will be a Failure of the Record: as, if a Recogniſance be taken before a Judge in his Chambers, and a *Scire facias* is ſued upon a Recogniſance before the Juſtices in Court, *R. Mod. Ca.* 42.

[If in Debt on Judgment of *Hilary* Term, and *Nul tiel Record* pleaded, it appears to be a Judgment of *Eaſter* Term. *Ince* v. *Hay, T.* 9 G. *Fort.* 353.]

If the Name of any Party, his Abode, or Addition, varies. 1 *Rol.* 754. *l.* 5.

Or there are more or fewer Perſons Parties. 1 *Rol.* 753. *l.* 45.

If it be for different Parcels. 3 *Co.* 2. *a.*

Or different Damages are recovered. 1. *Rol.* 754. *l.* 40.

If, in Treſpaſs for an Aſſault 15 *May* 9 *W.* 3. and detaining for twenty Days, the Defendant pleads a Recovery for the ſame Treſpaſs, againſt a Joint-Treſpaſſer, and the Record is for an Aſſault 14 *May*, and detaining for ten Days; where there is not an expreſs Averment that they are the ſame. *R. Lut.* 945.]

If a Recovery be recited to be upon Affirmation by *A. B.* and *C.* and the Record is, by *A.* and *B.* only. *R. Mo. Ca.* 168.

[If *Certiorari* to remove Conviction againſt *A.* and his Wife, and the Return be of Conviction againſt *A.* only; for this Variance the *Certiorari* will be quaſhed. *Anon M.* 5 G. *Str.* 116.]

[If Judgment is on *ſeveral* Promiſes, and intire Damages, and the *Scire facias* recites *cujuſdam Promiſſionis*, it is Variance, and cannot be amended. *Baynes* v. *Forreſt, H.* 4 G. 2. *Str.* 892.]

[If Plaintiff, in Action againſt Sheriff, ſays, that by Precept of the *King*, *&c.* and on *Nul tiel Record* it appears to be a Bill of *Middleſex*, Judgment ſhall be, *quod perfecit Recordum. Harris* v. *Bernard, H.* 10 G. 2. *Str.* 1069.]

(D) What not.

BUT if a Record has not a material Variance, it is not a Failure of Record: as if, in an Action upon the Caſe for a Conſpiracy in indicting of Barretry, it be alledged that it was *coram Juſticiarios de P. necnon ad diverſas Felonias*, *&c.*

and the Indictment was before Juſtices of the Peace, without more; for as Juſtices of the Peace they may take the Indictment. *R.* 2 *Cro.* 32. *Yel.* 46.

If, to a Recogniſance pleaded, *Nul tiel Record* be replied, and thereupon a Recogniſance with a Condition be produced. *Pl. Com.* 14. *b.*

If to an Information, a prior Information 28 *Ap.* 14 *Jac.* for the ſame Cauſe be pleaded, and upon *Nul tiel Record* an Information 29 *April*, without other Variance, be produced; for it was prior. *R. Hob.* 209.

In Treſpaſs, the Defendant juſtifies by an Execution out of an inferior Court, where a Plaint was, and afterwards *viz.* 2 *Oct.* 34 *Car.* 2. Judgment, *&c. Nul. tiel Record*, the Record of the Judgment produced was 25 *Dec.* 34 *Car.* 2. yet a good Execution. *Dub.* 3 *Lev.* 243.

If a Variance be in the Stile of the King, as, if *Scotland* be omitted. 3 *Mod.* 228.

[If the Record has a Date in Words at Length, and *George* now King, and the Replication has the Date in Figures, and alſo in Words at Length interlined, and *George* the 2*d*, now King, it is no Variance; for the *Figures* and *the* 2*d.* ſhall be rejected as Surpluſage. *Fiſher* v. *Sowerby*, *T.* 8 *G.* 2. *B. R. H.* 131.]

If the Judgment pleaded be *in Cur.' O. Protect' Angliæ & Domin' & Territor' adinde ſpectan'*, and in the Record produced (*Territor'*) is omitted. *R.* 3 *Mod* 227.

If a Patent be pleaded without Mention of a Date, and upon *Nul tiel Record*, a Patent be produced with a Date. 20 *H.* 7. 7. *a.*

If the Record produced varies only in the Proceſs, or Continuances, (being out of an inferior Court,) it is not material. *R. Hob.* 179.

If a Fine with Proclamations be pleaded, *An.* 30 *H.* 8. but the Record produced has Proclamations *Paſ. Mich. & Hil. An.* 30 *H.* 8. and the Proclamations of *Trin.* are entred without Mention of the Year; for, of Neceſſity, it muſt be the ſame Year. *R. Dy.* 234.

[On *Nul tiel Record*. *Segrave* for *Seagrave*, no Variance, *quia idem ſonnas*. *Williams* v. *Ogle*. *H.* 4 *G.* 2. *Str.* 889.

[Declaration for Damages only, Record for Damages and Coſts, is not material. *Barnes* 274.]

(E) No Averment againſt a Record.

A RECORD is of ſo high a Nature, that no Averment can be taken againſt the Record. *Co. L.* 260. *a.*

So, tho' the Matter be only ſuppoſed by the Record: as, if a Fine be of Land in *A.* and *B.* it cannot be averred that there is no ſuch Vill as *A.* 1 *Leo.* 82.

[An Averment that a *Latitat* teſted the laſt Day of Term iſſued in the Vacation following, muſt be admitted. *Johnſon* v. *Smith*, *P.* 33 *G.* 2. 2 *B. M.* 590.]

(F) A Record cannot be varied.

SO, regularly, a Thing entred upon Record, cannot be varied.

So, in the ſame Term, an Act of the Party entred upon Record, ſhall not be varied: as, a Nonſuit, or Default. *Sal.* 567.

A Default of the Defendant in Ejectment to confeſs Leaſe, Entry, and *Ouſter*; tho' the Plaintiff conſents. *R. Sal.* 566.

But the Act of the Court may be varied in the ſame Term. *Sal.* 567.

(G) Record removed from one Court to another.

HOW a Record ſhall be removed for Error, *Vide Pleader*, (3 B. 13.)
How, by *Certiorari*, *Vide Certiorari*, (A. 1, &c.)

A Record removed out of another Court into *B. R.* can never be remanded after it is filed, in the ſame, or in another Term. *R.* 1 *Sal.* 352.

Vide more concerning *Record* in *Amendment*, (K. 1, 2—N.)—*Enqueſt*, (A, 2, 3.)—*Eſtoppel*, (A. 1.—E. 1, &c.)—*Evidence*, (A. 1, &c.)—*Forfeiture*, (A. 2.—*Impriſonment*, (H. 1.)—*Pleader*, (E. 18.—F. 20.—G. 6.—P. 2—S. 14, 16.—3 B. 13.)—*Prærogative*, (D 66.)—*Retorn*, (E. 4.)—*Sewers*, (D.)—*Trial*, (A.)

Nul tiel Record.

Vide Pleader, (2 W. 13.)

RECORDARE.

Vide Ancient Demeſne, (G. 5.)—*Droit*, (B. 6.)—*Pleader*, (3 K. 8.)

RECORDER,

Vide Franchiſes, (F. 24.)

Recorder of London.

Vide Certificate, (B.)—*London*, (E.)

RECOVERY.

(A) Recovery.

A Recovery is when a Man obtains, or recovers his Right in Lands or Goods, &c. by Judgment, or Trial at Law. *Co. L.* 154. *a.*

And every Recovery is feigned (which is uſually called a Common Recovery) or real.

[Common Recoveries are now a mere Form of Conveyance, allowed (under certain Circumſtances of Form and Ceremony) to Tenants in Tail in Poſſeſſion, generally; and to Tenants in Tail in Remainder, with Conſent of the Owner of the firſt Eſtate for Life. *Taylor* v. *Horde*, *H.* 30 *G.* 2. 1 *B. M.* 60.]

(B) Common

(B) Common Recovery.

(B. 1.) By whom it may be ſuffered.

A Common Recovery may be ſuffered by him, who has an Eſtate in Fee.

Or, by him, who has an Eſtate-Tail in Poſſeſſion.

So the Tenant for Life, and Remainder-man in Tail, may join to ſuffer a Common Recovery. *R.* 10 *Co.* 44, 45. *Cro. El.* 570. *Mo.* 690. *Vide Eſtates*, (B. 27.)

So Husband and Wife ſeiſed in Right of the Wife, may ſuffer a Recovery of the Inheritance of the Wife. 2 *Rol.* 395. *l.* 44. *Vide Baron and Feme*, (G. 2.)

So they may join a Recovery, where they are jointly ſeiſed of an Eſtate, before, or after Marriage. *Vide Baron and Feme*, (G. 2.)

So a Recovery by the Husband alone as Vouchee will be good againſt all but the Wife, where they are jointly ſeiſed for Life, Remainder to the Husband in Tail. *Ibid.*

So, if they were Tenants in ſpecial Tail, Remainder to the Husband in Tail, Remainder over, it will be a Bar to all Remainders.

So a Recovery upon a *Præcipe* againſt the Husband alone, where they were Joint-tenants for Life, before the Coverture, Remainder to the Husband in Tail, will be good for a Moiety. *R. Mo.* 95.

So a Recovery by an Infant, as Vouchee, by his Guardian, will be good. *Vide Enfant*, (B. 2.)

So, if he appears by Attorney, or in Perſon, it ſhall be good, till it be defeated by Error. *Vide Enfant*, (B. 2.)

[By *St.* 14 *G.* 2. *c.* 20. *ſſ.* 4. Purchaſer for valuable Conſideration, after twenty Year's, producing the Deed to make Tenant to the Writ, and declaring the Uſes; ſuch Deed ſhall be Evidence that the Recovery was duly ſuffered, provided the Perſon making the Deed had ſufficient Eſtate and Power.]

(B. 2.) By whom not.

But a Recovery ſuffered by Tenant for Life, is not good; for by the *St.* 32 *H.* 8. 31. and 14 *El.* 8. it will be a Forfeiture, for which he in Remainder may enter, after or before Execution. *R.* 1 *Co.* 15.

Tho' he conveys to another in Fee, who ſuffers a Common Recovery, in which the Tenant for Life is Vouchee. *R.* 1 *Co.* 15. *Mo.* 271.

So, if there be Tenant for Life, Remainder to *B.* in Tail, a Recovery by *B.* is void, and does not bind his Iſſue by *Eſtoppel*. *R. Mo.* 256.

So, if *A.* Tenant in Tail, enfeoffs *B.* who re-enfeoffs *A. C.* and *D.* for the Life of *A.* Remainder to *F.* in Fee, and a Recovery is had againſt *A.* and after his Death *C.* and *D.* enter; this Recovery binds the Feoffees *C.* and *D.* only during the Life of *A.* *R.* 1 *And.* 44.

So a Common Recovery by him, who is not ſeiſed in Privity of the Eſtate-tail, does not bar the Entail, or Remainders. 2 *Rol.* 394. *l.* 40.

As, if Tenant for Life, Remainder to *B.* in Tail, be diſſeiſed, and the Diſſeiſor enfeoffs *B.* who ſuffers a Recovery; it does not bar the Entail: for *B.* was not ſeiſed of it, and the Recompence does not extend to it. *R.* 3 *Co.* 59. 2 *Rol.* 395. *l.* 5.

So a Recovery by Tenant in Tail after an Attainder for Treaſon does not bar the Remainders. 2 *Rol.* 394. *l.* 37.

So, if an eldeſt Son, inheritable to the Entail, enfeoffs *A.* againſt whom a *Præcipe* is had with a *Voucher* of the Son, who afterwards dies without Iſſue, in the Life of Tenant in Tail; the Recovery does not bar the younger Son of the Tenant in Tail. *R.* 1 *And.* 44.

So a Common Recovery by Huſband alone, ſeiſed in Right of his Wife, does not bar her Eſtate. 2 *Rol.* 394. *l.* 10.

So a Recovery by an Infant does not bar him. 2 *Rol.* 395. *l.* 45. *Vide Ante*, (B. 1.)

[A Recovery ought not to be ſupported where the Parties had no Power to ſuffer it; and *Stat.* 14 *G.* 2. *c.* 20. proceeds upon their having Power to ſuffer it. *Taylor* v. *Horde*, *H.* 30 *G.* 2. 1 *B. M.* 60.]

[A ſecret Feoffment under a *naked* Poſſeſſion is not ſufficient to ſupport a common Recovery ſuffered by the Remainder-man. *Ibid.*]

[Thoſe who have no Power to ſuffer a Recovery, ſhall not by making an Eſtate by *Wrong*, or *Fraud*, or *Practice*, bar thoſe in Remainder or Reverſion; and ſuch Eſtate is no Eſtate in Law. *Ibid.*]

[A Recovery which the Parties had no Power to ſuffer directly, and without ſuch fraudulent Eſtate, ſhall not be made good by Wrong and Fraud. *Ibid.*]

[A Feoffee to the Intent to be Tenant to the *Præcipe* is a mere Inſtrument for one Purpoſe of Form only; and a Man, by his own injurious Feoffment, ſhall not acquire an Advantage to himſelf; an Act founded on Wrong, ſhall not, by Virtue of the Crime itſelf, become legal, for the Author's Advantage. *Ibid.*]

[If *A.* Tenant in Tail in Remainder, after the Death of *B.* Jointreſs, Tenant for Life in Poſſeſſion, recovers in Ejectment againſt her, and enters, and has Poſſeſſion, but *B.* is not ouſted, nor *A.* ſeized, and *A.* infeoffs *C.* to make him Tenant to the *Præcipe*, and a Recovery is thereupon ſuffered, it is void; for *A.* is not a Diſſeiſor, nor is his Feoffment a Diſſeiſin. *Ibid.*]

(B. 3) Who ſhall be a good Tenant to the *Præcipe*.

In every Common Recovery there ought to be a good Tenant to the *Præcipe*; and therefore, if the Tenant had not the Freehold at the Time of the Recovery, it will be Error.

As, if *A.* be Tenant for Life, Remainder to *B.* in Tail, and the *Præcipe* be againſt *B.* 1 *Vent.* 360. 3 *Co.* 6. *b.*

Or, againſt *A.* and *B.* for *B.* has Nothing in the Freehold. *Dy.* 252. *b.* 3 *Co.* 6. *b.*

So, if by Fine an Eſtate be given to Huſband and Wife for their Lives, and the *Præcipe* be againſt the Huſband alone: for they take by Entireties, and the Huſband alone has Nothing. *R.* 3 *Co.* 5. *a.* *Mo.* 210. 1 *And.* 162. *R. Sal.* 568.

So, if the Huſband alone, by Leaſe and Releaſe conveys to *B.* and a *Præcipe* be againſt *B.* for the Huſband cannot diſpoſe of any Part of the Land. *Semb.* 3 *Co.* 5. *a.*

But it will be good, if he had the Freehold at the Time of the Recovery, tho' it was upon a defeazible Title: As, by Feoffment, as well as by Fine of Tenant in Tail, tho' this was a Diſcontinuance.

By Bargain and Sale of the Tenant in Tail.

Or Leaſe and Releaſe.

Tho' the Bargainee was made Tenant to the *Præcipe* before Inrolment, if the Deed be afterwards inrolled. 1 *Vent.* 360. *Cont. per Hob. Godb.* 218. but this ſeems miſreported. 2 *Rol.* 394. *l.* 40.

If he be made Tenant of the Freehold by the Uſes declared of a Fine, which is afterwards reverſed. *R. Sal.* 568.

If Tenant for Life ſurrenders to him in Reverſion, or Remainder, upon Condition, and afterwards a *Præcipe* is brought againſt him in Reverſion or Remainder; tho' immediately after the Recovery the Tenant for Life re-enters for the Condition broken. *Semb. Skin.* 3, 63.

If Tenant in Tail levies a Fine to *A.* and his Heirs, to the Intent to make him Tenant to the *Præcipe*, and ſeven Years afterwards a *Præcipe* is brought againſt *A.* who vouches the Tenant in Tail; he ſhall be a good Tenant, tho' no Uſe be declared to him by Writing, ſince the *St.* 29 *Car.* 2, 3. *R. Eq. R.* 17.

So, if Tenant in Tail, and a Stranger, who has Nothing, are Tenants to the *Præcipe*, it will be good. 1 *Vent.* 358. *R. Pl. Com.* 514. *Skin.* 3.

So if Tenant for Life ſurrenders to *B.* in Reverſion (who is made Tenant to the *Præcipe*) at any Time before the Recovery ſuffered; tho' the Judgment relates to the firſt Day of the Term. *Per* 2 *J. Noy* 126.

So, if a *Præcipe* be againſt *A.* returnable 15 *Mart.* and *A.* then appears and vouches *B.* Tenant in Tail, againſt whom a Summons *ad warrantizandum* goes, returnable *Oct' Pur'*, and *B.* by Leaſe and Releaſe 1 and 2 *Jan'* before conveys to *A.* for Life; it is ſufficient to make him a good Tenant to the *Præcipe*, tho' he was not ſo at his Appearance or *Voucher*. *R. & Aff. in Error, Sal.* 569. *Comb.* 425.

So it is ſufficient, if he be a good Tenant at any Time before the Recovery had, *viz.* the Judgment. *Sal.* 569. *Sho.* 347.

[By *Stat.* 14 *G.* 2. *c.* 20. Common Recovery of Premiſſes in Leaſe for Lives, are valid, without Surrender of ſuch Leaſes, or the Tenant's joining to make a Tenant to the Writ.]

[*Sſ.* 2. But not unleſs the Perſon intitled to the firſt Eſtate for Life, or greater Eſtate after the Expiration of ſuch Leaſe, ſhall convey an Eſtate for Life at leaſt to the Tenant of the Writ.]

[*Sſ.* 3. And this ſhall not prejudice the Eſtate of the Leſſee.]

[*Sſ.* 5 After twenty Years it ſhall be good, though the Deed to make the Tenant do not appear.]

[*Sſ.* 6. Recovery ſhall be good, though the Fine or Deed making the Tenant ſhould be levied or executed after Judgment in the Recovery, and the Writ of Seiſin awarded, provided it is in the ſame Term.]

[If Tenant in Tail in Remainder ſuffer a Recovery, it ſhall be preſumed, after a long Time (as forty Years,) that Tenant for Life in Poſſeſſion ſurrendered. *Warren* v. *Greenville*, *P.* 13 *G.* 2. *Str.* 1129.]

[But here was alſo an Entry in the Attorney's Debt-book, he being then dead, of drawing and ingroſſing Surrender from Tenant for Life, Mother to the Tenant in Tail, and the Bill was paid. *Vide Goodtitle* v. *Duke of Chandos*, *M.* 1 *G.* 3. 2 *B. M.* 1065.]

[On an old Recovery, where no Deed appears, a proper Tenant to the *Præcipe* ſhall be preſumed; but if a Deed appears wherein proper Parties did not join, and the Uſes are declared to be warranted by ſuch Deed, the Court will not preſume there is any other. *Keen* v. *Earl of Effingham*, *P.* 20 *G.* 2. *Str.* 1267.]

[When one has Power to ſuffer Recovery, it ſhall be preſumed all is rightly done, unleſs ſomething appears to the contrary. *Ibid.*]

[But there can be no Preſumption, where there is no Ground for it. *Ibid.*]

[The Suppoſition that Tenant in Tail would not ſuffer a Recovery, without getting a Surrender of Life-Eſtate, forms no Preſumption. *Ibid.*]

[A long Poſſeſſion by Tenant in Tail, after Death of Tenant for Life, doth leave Ground of Preſumption. *Ibid.*]

(B. 4.) What the Effect will be, if there be not a good Tenant.

If there be not a Tenant of the Freehold Tenant to the *Præcipe*, the Recovery will be void.

And therefore, if a Recovery be pleaded in Bar, the Plaintiff may ſay, that the Party named Tenant *non tenuit*. *Jon.* 352, 3.

But, if it be found that the Perſon named Tenant was Tenant for Part, the Recovery will be good for ſo much, tho' void for the Reſidue. *R. Jon.* 353, 374.

(B. 5.) The Effect of a Recovery.

How a Recovery by Judgment, *&c.* ſhall be executed, *Vide Execution*, (A. 2, 6.)—*Fine*, (E. 15.)

A Judgment *ſemper pro Veritate accipitur*. *Co. L.* 39. *a.*

And therefore, by the Common Law, a Party, or Privy to the Judgment, can never falſify the ſame Recovery.

So the Iſſue in Tail cannot falſify a Recovery againſt Tenant in Tail, after a Verdict, in the Point tried. *Co. L.* 361. *a.*

Nor

Nor a Wife, after the Death of her Husband, upon a Recovery againſt the Husband. 2 *Inſt.* 350.

So He in Remainder or Reverſion, or any, who derive an Intereſt under him, cannot falſify a common Recovery by Tenant in Tail. 1 *Co.* 62. *b.*

So, if there was a Term for Years, and afterwards a Recovery againſt the Tenant of the Freehold, the Termor, by the Common Law, could not falſify the Recovery, tho' it was by Colluſion. *Co. L.* 46. *a.* 2 *Inſt.* 322.

(B. 6.) When it may be falſified.

(B. 6.) By the Iſſue in Tail.

But, if a Recovery be againſt Tenant in Tail by Default, the Iſſue in Tail may falſify it, if it was upon a falſe Title: As, if *A.* recovers againſt Tenant in Tail, in a Writ of Entry upon a *Diſſeiſin* alledged by him of the Grandfather of *A.* and after Default Execution is ſued; the Iſſue in Tail may have a *Formedon*, and if the Recovery be pleaded, may ſay, that Tenant in Tail did not diſſeiſe the Grandfather of *A.* *Lit. S.* 688.

So, if a Recovery be againſt Tenant in Tail by *Nil dicit*, Confeſſion, or Demurrer. *Co. L.* 361. *a.*

So, if a Recovery be againſt Tenant in Tail by Verdict, tho' the Iſſue in Tail cannot falſify it in the Point tried, he may falſify it by collateral Matter: As, by a collateral Warranty, or a Releaſe, not pleaded by the Tenant in Tail. *Ibid.*

So the Iſſue in Tail may avoid a Recovery, by Confeſſion and Avoidance of the Point tried. *Ibid.*

(B. 7.) By him in Reverſion or Remainder.

So, if a Recovery be againſt Tenant for Life, which makes a Diſcontinuance of the Reverſion or Remainder, it may be avoided by Entry. *Co. L.* 362. *a.*

If the Recovery was by Covin, or Conſent, by the *St.* 32 *H.* 8. 31. and 14 *El.* 8. it will be a Forfeiture, and he in Reverſion or Remainder may enter for the Forfeiture. *Co. L.* 362. *a.* *Vide Forfeiture*, (A. 2.)

(B. 8.) By a Term or for Years.

So, by the *St. Glo.* 11. If a Recovery be by Default in *London* againſt the Tenant of the Freehold, he, who has a Term for Years, being ouſted, the Mayor and Bailiffs may inquire, whether the Recovery was by Colluſion, and if ſo found, the Execution ſhall be ſuſpended till the Term is paſſed: So, by Equity, before Juſtices, if the Termor challenges before Judgment.

And therefore, before Judgment, the Termor by Deed may claim to be received to defend his Right. 2 *Inſt.* 323. *Vide Receipt*, (A. 1.)

And, after Judgment, he who has a Term by Deed, if the Judgment was by Default, ſhall have a Writ of Inquiry upon that Statute, to inquire, whether the Judgment was by Colluſion; and if it be ſo found, the Judgment ſhall be ſuſpended, till the Term is paſſed. 2 *Inſt.* 321.

And this, upon a Recovery in other Courts, Cities, or Boroughs, as well as in *London*. 2 *Inſt.* 322.

So now, by the *St.* 21 *H.* 8. 15. A Termor for Years, by Deed, or without Writing, may falſify, for his Term only, a Recovery by feigned and untrue Title: And ſhall enjoy his Term according to his Leaſe, againſt ſuch Recoveror, his Heirs and Aſſigns. And ſo may Tenant by Statute-Merchant, Staple, or *Elegit*. *Vide Co. L.* 46. *a.* 2 *Inſt.* 322.

And this, tho' the Demiſe for Years be not by Writing. 2 *Inſt.* 322.

So, if there be a Recovery in Dower by a Woman, againſt Leſſee for Years, as Tenant of the Freehold; he may enter upon the Demandant for his Term, tho' he has not pleaded *Non-Tenure*. *Per* 2 *J.* 1 *Leo.* 92.

(B. 9.) How the Proceeding ſhall be.

The Proceeding to falſify ſuch Recovery againſt him, who has the Freehold, ſhall be by Writ, in the Nature of a Commiſſion to the Mayor and Bailiffs, reciting the Leaſe, the Action brought by Colluſion, and the *St.* of *Gloc.* and afterwards commanding them to do right. 2 *Inſt.* 323.

Vide more concerning a *real Recovery in Action*, (K. 1, &c.)—*Eſtates*, (B. 26.)—*Pleader*, (3 M. 14.) concerning a *Common Recovery* in *Baron and Feme*, (G. 2.)—*Chancery*, (3 N. 1, 2.—4 K. 1, 2.)—*Enfant*, (B. 2.)—*Eſtates*, (B. 27, &c.)—*Pleader*, (2 Y. 14.—3 A. 2, &c.)

RECTOR.

Vide Diſmes, (C. 1.)—*Eccleſiaſtical Perſons*, (C. 6.)

RECTORY.

Vide Eccleſiaſtical Perſons, (C. 6.)

RECUSANT.

Vide Juſtices of Peace, (B. 17, 18, 19.)

REDEMPTION.

Vide Chancery, (4 A. 4, &c.)

RE-DISSEISIN.

Vide Aſſiſe, (F.)

RE-ENTRY.

Vide Rent, (D. 3, &c.)

RE-EXTENT.

Vide Statute-Staple, (D. 7, 8.)

REEVE.

Vide Leet, (M. 3.)

REFERENCE.

Reference to a Maſter.

Vide Chancery, (W. 1, &c.)

REFUSAL.

—— of Tender.

Vide Condition, (L. 4.)

REGARDER.

Vide Chaſe (Q. 3.)

REGISTER.

Registers of Chancery.

Vide Chancery, (B. 6.)

REGISTRING ESTATES.

Vide Popery, (B. 10, 12.)

REGRATING.

Vide Juſtices of Peace, (B. 39.)

REGULATION OF TRADE.

Vide Trade, (B.)

REHEARING.

Vide Chancery, (Y. 5.)

REJOINDER.

Vide Chancery, (O.)—*Pleader* (H.)

RELATION.

Vide Bargain and Sale, (B. 9.)—*Chancery*, (3 Y. 16, 17.)—*Confirmation*, (D. 5.)—*Dett*, (G. 9,)—*Execution*, (D. 1, 2.)—*Forfeiture*, (B. 6.)—*Parliament*, R. 1.)

RELEASE.

(A) Releaſe.

(A. 1.) Expreſs.

(A. 1.) By what Words it ſhall be.

A Releaſe is, when a Man quits or renounces that which he before had. And it may be by expreſs Words, or by Act in Law. *Co. L.* 264. *b.*

A Releaſe by expreſs Words does not require any particular Word; for if a Man remiſes, or quits Claim, it will be of the ſame Effect as the Word, *Releaſe*. *Lit. S.* 445.

So, if he renounces, acquits, *&c.* *Co. L.* 264. *b.*

If a Joint-tenant grants, bargains and ſells his Land to his Companion; this amounts to a Releaſe. *R.* 1 *Vent.* 78. 2 *Sand.* 96. 1 *Sid.* 452. *Ray.* 187.

So

So, if a Leſſor grants, that his Leſſee ſhall be diſcharged of his Rent; this amounts to a Releaſe. *Co. L.* 264. *b.*

So, if a Man acknowledges himſelf to be ſatisfied and diſcharged of all Bonds, *&c.* by the Obligor; this amounts to a Releaſe of a Bond. *R.* 9 *Co.* 52. *b.*

So, if a Man covenants that he will never ſue for a Debt; this amounts to a Releaſe. *Cro. El.* 352. 1 *Rol.* 939. *l.* 50. *Per Holt, Sho.* 47.

So, if he covenants, that he ſhall not be ſued within ſuch a Time, and if he be, that it ſhall be a Releaſe; this amounts to a Releaſe. 21 *H.* 7. 24. 1 *Rol.* 939. *l.* 50.

But, if a Man by Deed grants, that the Obligor ſhall not be ſued before ſuch a Feaſt; this does not amount to a Releaſe; but is only a Covenant. *R.* 21 *H.* 7. 24. *a.* *R. Cro. El.* 352. 1 *Rol.* 939. *l.* 45. *R. Tr.* 1 *W. & M. B. R. inter Ayliffe and Schrimſhire. Sho.* 47.

Or covenants, that he will not ſue in ſuch a Time upon Pain of Forfeiture of his Debt. *Semb. Sho.* 331.

So a Releaſe by expreſs Words can only be by Deed. *Co. L.* 264. *b.*

(A. 2.) Releaſe in Law.

So a Releaſe may be by Act, or Operation of Law: As, if a Lord diſſeiſes his Tenant, and makes a Feoffment, by Deed, or without Deed; this amounts to a Releaſe of his Seigniory. *Co. L.* 264. *b.*

If a Diſſeiſee diſſeiſes the Heir of the Diſſeiſor, and makes a Feoffment; this amounts to a Releaſe of his Right. *Ibid.*

So, if a Man makes his Debtor, by Bond or otherwiſe, his Executor; this amounts to a Releaſe of the Debt; for he cannot have an Action againſt himſelf, and a perſonal Thing ſuſpended is loſt. *Co. L.* 264. *b.* *Vide Adminiſtration*, (B. 5.)

So, if there are Joint-Debtors, and he makes one of them his Executor, or the Wife of one his Executrix. *Ibid.*

So, if a Woman Obligee, or one of the Obligees takes to Husband the Debtor; it will be a Releaſe of the Debt. *Co. L.* 264. *b.*

But an Act does not amount to a Releaſe in Law, to the Prejudice of another: As, if an Executrix takes to Husband the Debtor of her Teſtator. *Co. L.* 264. *Vide Adminiſtration*, (B. 5.)

Or the Ordinary grants Adminiſtration to him. *Vide Adminiſtration*, (B. 5.)

So, where a Man makes his Debtor Executor, *&c.* his Debt ſhall be Aſſets in his Hands for the Teſtator's Creditors. *Vide Adminiſtration*, (B. 5.)

So a Releaſe in Law ſhall not be extended beyond the evident Intent: as, if a Diſſeiſee diſſeiſes the Heir of the Diſſeiſor, and makes a Leaſe for Life; this does not amount to a Releaſe of his Right but only for the Life of the Leſſee. *Co. L.* 264. *b.*

(A. 3.) When Words enure to a double Intent.

If a Woman *Meſne* takes to Husband the Tenant *Peravaile*, and the Lord releaſes his Right to the Husband; this enures to extinguiſh the Seigniory, and alſo the *Meſnalty*. *Co. L.* 280. *a.*

So, if a Tenancy be granted to the Lord and *B.* and the Heirs of *B.* and the Lord releaſes to *B.* this enures to paſs his Eſtate in the Tenancy to *B.* and alſo to extinguiſh his Seigniory. *Co. L.* 280. *a.*

So, if a Lord grants his Seigniory to *B.* for Years, and afterwards releaſes to him and the Terre-tenant, generally; the Seigniory, and alſo the Eſtate of *B.* ſhall be both extinguiſhed. *Co. L.* 280. *a.*

(B) Releases, How they inure; Release of a Right.

(B. 1.) What ſhall be a good one.

RELEASES are of a Right, or of an Eſtate in Lands and Tenements, or of Things Perſonal.

If a Man, who has but a naked Right to Land, releaſes all his Right to him, who has the Freehold of the ſame Land; it will be a good Releaſe of his Right. *Lit. S.* 447. 10 *Co.* 48.

As, if a Diſſeiſee, or his Heir, releaſe to the Diſſeiſor, or his Heir.

So, if he releaſes to him, who has but a Freehold in Law, and not in Deed: as, if he releaſes to the Heir of the Diſſeiſor before his Entry. *Lit. S.* 448.

So, if he releaſes to him, who has the Reverſion or Remainder in Deed of the ſame Land, tho' he has not the Freehold; as, if Diſſeiſor makes a Leaſe for Life only, and afterwards the Diſſeiſee, or his Heir, releaſes to the Diſſeiſor, who has the Reverſion in him. *Lit. S.* 449.

So, if a Diſſeiſor releaſes to *A.* for Life, Remainder to another, and the Diſſeiſee releaſes to him in Remainder. *Lit. S.* 450.

So, if he, who has an Annuity by Preſcription out of a Rectory, releaſes to the Patron in Time of Vacation. *Co. L.* 266. *a.*

So, if he releaſes to him, who has an Eſtate only by *Eſtoppel*, or in Suppoſition of Law; as, if the Demandant releaſes to the Tenant in a *Præcipe*, it will be good, tho' he has aliened before, *pendente Lite*. *Co. L.* 266. *a.*

Or to the Vouchee, tho' he has Nothing in the Land; for he is Tenant to the Demandant in Suppoſition of Law, *Co. L.* 265. *b.*

So a Releaſe of a Right may be good, in reſpect of Privity, to him who has not any Eſtate: as, if a Tenant be diſſeiſed, and the Lord releaſes all his Right to the Diſſeiſee; his Seigniory is extinct. *Lit. S.* 454.

So, if a Donee, rendring Rent, be diſſeiſed, and the Donor releaſes to him his Right; this extinguiſhes his Rent in reſpect of the Privity. *Lit. S.* 455.

Or, if the Donee, rendring Rent, diſcontinues in Fee, and afterwards the Donor releaſes to him. *Co. L.* 269. *a.*

So, if a Leſſee for Life, rendring Rent, be diſſeiſed, and the Leſſor releaſes to him all his Right; the Rent is extinct, tho' the Reverſion is not. *Lit. S.* 456.

So, if the Leſſor releaſes to the Leſſee for Years, before his Entry, or Term commenced, all his Right in the Land; the Rent is extinguiſhed. *Co. L.* 270. *a.* *Vide Poſt*, (C. 2.)—*Eſtates*, (G. 14.)

So a Releaſe of a Right will be good, tho' there be no Privity between the Releaſor and Releaſee: as, if the Diſſeiſor makes a Leaſe for Life, and the Diſſeiſee releaſes his Right to the Leſſee. *Co. L.* 266. *a.*

Or, to *A.* and his Heirs for the Life of another, and the Diſſeiſee releaſes to the Heir. *Co. L.* 275. *a.*

Tho' the Releaſe be to the Heir before his Entry. *Ibid.*

So a Releaſe of a Right will be effectual, tho' there be no Mention of the Heirs of the Releaſee: As, if a Diſſeiſee releaſes to the Diſſeiſor, generally. *Lit. S.* 467.

Or only for a Day, or an Hour. *Ibid.*

So a Releaſe of a Right upon Condition will be good, and upon the Condition broken, the Right ſhall be reveſted. *Co. L.* 266. *a.* 274. *b.*

So a Man, who has a Right only to a Chattel, may releaſe to him who has but a Chattel, and not a Freehold: as, if Leſſee for Years, Reverſion to *B.* be ouſted, and the Diſſeiſor leaſes to *A.* for Years; a Releaſe by the firſt Leſſee of his Right, to *A.* is good. *Co. L.* 265. *b.*

(B. 2.) What

(B. 2.) What not.

But a Releaſe by him, who has a Right to the Inheritance or Freehold, to him who has not a Freehold in Deed, or in Law, nor an Eſtate in Reverſion, or Remainder, and if there be no Privity between them, is void: as, if a Diſſeiſee releaſe his Right to a Leſſee for Years of the Diſſeiſor. *Co. L.* 266. *a.*

So, if Tenant for Life, Reverſion, or Remainder to *B.* be diſſeiſed; a Releaſe by any one, of his Right to *B.* is void; for he had only a Right to the Reverſion or Remainder. *Lit. S.* 451.

So a Releaſe to a Diſſeiſee by him, who has a Rent-Charge out of the Land, is void. *Co. Lit.* 268. *a.*

Or, by a Donor of his Reverſion or Right therein to the Donee, being diſſeiſed. *Co. L.* 268. *b.*

Yet Tenant in Dower may releaſe her Dower to a Guardian in *Chivalry*, tho' he has only a Chattel; for it is recoverable againſt him. *Co. L.* 266. *a.*

So a Releaſe to him, who has no Eſtate, or Right, is void, tho' there be a Privity between them: as, if Tenant in Fee makes a Feoffment, and afterwards the Lord releaſes to the Feoffor, his Seigniory is not extinct. *Lit. S.* 457.

(B. 3.) What Right ſhall be releaſed.

If a Man releaſes all his Right in Land, this extends to all his preſent Right. *Co. L.* 265. *a.*

So it extends to a Power of Revocation, or other Intereſt of the Releaſor himſelf. *Co. L.* 265. *b.*

Tho' he has a preſent Right, only to a future Intereſt; As, if a Man has a Right only to a Reverſion or Remainder after an Eſtate for Life, or Years in *Eſſe*. *Co. L.* 265. *a.*

Tho' he has only a Poſſibility upon a Condition broken, or a Contingency. *R. Jon.* 17.

If a Husband leaſes for Life, and dies, and the Wife releaſes her Dower, or her Right in the Land, or all Demands, to him in Reverſion, it will be good; for ſhe has a preſent Right to her Dower, tho' ſhe has no Right to demand it. againſt him in Reverſion during the Life of the Leſſee. *Co. L.* 265. *a.* *R.* 8 *Co.* 151, 154. *a.*

If the Conuſor of a Fine of Lands in *Antient Demeſne* releaſes to the Conuſee his Right in the Land; this deſtroys his Right to be reſtored, if the Fine be annulled by a Writ of Diſceit, tho' it was a Contingency. *F. N. B.* 98. *A. R.* 10 *Co.* 50. *a.*

If a Conuſor of a Statute, *&c.* enfeoffs, and before Execution the Conuſee releaſes all his Right to the Feoffee, he cannot afterwards extend upon the Feoffee. *R. Cro. El.* 40. *Adm.* 2 *Cro.* 449.

But a Releaſe of his Right does not amount to an Extinguiſhment of a bare Authority: as, if a Man deviſes to his Executor an Authority to ſell Land, and he releaſes all his Right and Title in the Land to the Heir; this does not extinguiſh his Authority. *Co. L.* 265. *b.*

So, if the Executor diſſeiſes the Heir, and aliens the Land. 1 *Co.* 111. *a.*

So, if *Ceſtuy que Uſe* before the *St.* 27 *H.* 8. had deviſed, that his Feoffees ſhould ſell his Land, and they make a Feoffment; yet their Authority to ſell remains. *Co. L.* 265. *b.*

So a Releaſe does not extend to a future Right: as, if a Father be diſſeiſed, and his Son (in his Life-Time) releaſes all his Right to the Diſſeiſor, without Warranty, and the Father dies; the Son is not barred by this Releaſe. *Co. L.* 265. *a.*

Tho' the Releaſe be of all his Right, *quod in poſterum quovis Modo habere poterit. Lit. S.* 446.

So, if Tenant for Life, Remainder to the Right Heirs of *B.* be diſſeiſed, and the eldeſt Son of *B.* releaſes; it will be void. 10 *Co.* 51. *a.*

So, if the Conuſee releaſes, to the Conuſor of a Statute, all his Right to the Land, he may afterwards extend it. *Co. L.* 265. *b.*

So, if the Plaintiff, before Judgment againſt the Principal, releaſes all Demands to the Bail; this is not a Diſcharge to the Bail, if he afterwards obtains Judgment and takes Execution againſt the Bail. *Co. L.* 265. *b.*

So, if an Annuity, *&c.* be granted upon a Condition precedent; a Releaſe by the Grantee, before the Condition performed, will be void. *D.* 1 *Co.* 111. *b.*

(B. 4.) How the Releaſe of a Right enures.

(B. 4.) When a Releaſe to one enures to another.

If a Diſſeiſor makes a Feoffment to two, a Releaſe to one enures to both. *Lit. S.* 472.

If Tenant for Life, or in Tail be diſſeiſed by two, and releaſes to one, it enures to both; for the Diſſeiſors have a Fee, and the Releaſe of a Leſſee, or Donee cannot enure to the whole Eſtate, neither can it enure as an Entry and Grant, for that ſhall veſt the Reverſion, and therefore it muſt enure to both. *Co. L.* 276. *a.*

If two Joint-tenants are diſſeiſed by two, and one of them releaſes to one of the Diſſeiſors, this enures to both; becauſe the Releaſe is only of a Moiety, and no Part in Certain. *Ibid.*

If there be two Diſſeiſors, and they leaſe for Life, or Years, and then the Diſſeiſee releaſes to one of them, it enures to both; for one cannot have the ſole Poſſeſſion. *Ibid.*

So, in all Caſes, where a Releaſe is to one, who is not merely a Wrong-Doer, it enures to his Companion: as, if two uſurp to an Advowſon, and the rightful Patron releaſes to one of them, this enures to both; for their Clerk was admitted and inſtituted, which are judicial Acts, and ſo the Uſurpation is not merely tortious. *Ibid.*

So if a *Diſſeiſin* be by two Women, and one of them takes Huſband, a Releaſe to the Huſband enures to both; for he was not a Wrong-Doer. *Ibid.*

So, if a Diſſeiſin be by two, and he, who had Title to enter for a Condition broken, Conſent to a Raviſher, Alienation in *Mortmain*, *&c.* releaſes to one of them; this enures to both; for the Wrong was not immediate to the Releaſor, and the Releaſe was only of a Title, and not of a Right. *Ibid.*

So, if a Diſſeiſee releaſes his Right to the Tenant for Life; this enures to the Benefit of him in Reverſion, or Remainder. *Lit. S.* 453, 470, 471.

Or, to the Donee in Tail. *Co. L.* 267. *b.*

Tho' the Entry of the Releaſor was not *congeable* at the Time of the Releaſe. *Co. L.* 279. *b.*

So a Releaſe to him in Reverſion or Remainder enures to the Benefit of the Tenant for Life, if he can ſhew it. *Lit. S.* 452.

And, to a Reverſioner after an Eſtate-Tail, enures to the Tenant in Tail. *Co. L.* 267. *b.*

So, if the Lord releaſes to the Feoffee of the Tenant, the Feoffor ſhall take Advantage of it. *Co. L.* 269. *b.*

So, if a Leſſee for Life, Tenant in Dower, or by Curteſy, commits Waſte, and afterwards grants over his Eſtate, and the Leſſor releaſes to the Grantee; this enures to the Benefit of the Leſſee, *&c.* *Ibid.*

If a Diſſeiſor be diſſeiſed by *B.* a Releaſe by the Diſſeiſee to *B.* or any ſubſequent Diſſeiſor, enures to the Benefit of all precedent Diſſeiſors, when the Entry of the Diſſeiſee at the Time of the Releaſe was not lawful. *Co. L.* 277. *a.*

So, if *A.* leaſes for Life to one, who is diſſeiſed by *B.* who is diſſeiſed by *C.* and afterwards *A. releaſes* his Right to *C.* *B.* may enter upon him, becauſe the Entry of *A.* at the Time of his Releaſe was not lawful. *Ibid.*

And if the Leſſee for Life enters, he reveſts the Reverſion in *B.* *Ibid.*

(B. 5.) Enures by Way of paſſing a Right.

A Releaſe of a Right uſually enures to paſs and veſt the Right of him, who makes the Releaſe, in him to whom the Releaſe is made: as, if a Diſſeiſee releaſes his Right to the Diſſeiſor; his Eſtate which was wrongful is now lawful. *Lit. S.* 466.

If

If the *Diſſeiſin* was by two, and he releaſes to one of them, he ſhall hold his Companion out of the Land. *Lit. S.* 472. for it enures as an Entry and Feoffment. *Co. L.* 276. *a.*

If a Diſſeiſor be diſſeiſed, a Releaſe to any ſubſequent Diſſeiſor bars all the precedent. *Lit. S.* 473.

So, if a Tenant for Life, or Donee in Tail, be diſſeiſed by One, and releaſes his Right to him; this veſts the Right in him during the Life of the Releaſor. *Co. L.* 276. *a.*

But, if the *Diſſeiſin* be by two, it enures to both. *Vide Ante*, (B. 4.)

So, if the King's Leſſee for Life be diſſeiſed by two, and releaſe to one of them; he ſhall hold the other out; for the *Diſſeiſin* was only of an Eſtate for Life. *Co. L.* 276. *a.*

So, if Joint-tenants leaſe for Life, and afterwards diſſeiſe the Tenant, and he releaſes to one of them; he ſhall hold out his Companion. *Ibid.*

So, if Leſſee for Life, and he in Reverſion, being diſſeiſed by two, join in a Releaſe to one of them; it enures to him only. *Ibid.*

So a Releaſe by a Diſſeiſee to a Diſſeiſor of a Feoffee of a Diſſeiſor, gives him the Right, and ouſts all *meſne* Titles againſt the Releaſee ſince the firſt *Diſſeiſin*. *Co. L.* 276. *b.*

So, if a Diſſeiſor leaſes for Life to *B.* who aliens in Fee, a Releaſe by the Diſſeiſee to him, prevents the Entry of the Diſſeiſor for the Forfeiture. *Co. L.* 276. *b.* 277. *b.*

So, if he aliens in Fee to two, and the Releaſe be to one of them. *Co. L.* 277. *a.*

If the Releaſe be to an Abator, *&c.* upon the Heir of the Diſſeiſor. *Lit. S.* 475.

So the Releaſe of a Right defeats all *meſne* Charges not granted by the Releaſee himſelf. *Co. L.* 277, 8.

But the Releaſe of a Right does not defeat a *meſne* Title, which the Releaſee himſelf has granted, or accepted: as, if a Diſſeiſor grants a Rent-Charge or makes a Feoffment upon Condition, a Releaſe by the Diſſeiſee does not defeat the Rent, or Condition. *Lit. S.* 476, 477.

So, if a Right be releaſed to him, who has Poſſeſſion upon a Defeaſable Title, if the Poſſeſſion be defeated, the Right accompanies it; for it was veſted in him to whom the Releaſe was made: as, if *A.* diſſeiſes the Heir of a Diſſeiſor, and afterwards the firſt Diſſeiſee releaſes to *A.* againſt whom the Heir of the Diſſeiſor recovers; he ſhall have the Right as well as the Poſſeſſion. *Co. L.* 266. *a.* 279. *a.*

So, if the Diſſeiſee enters upon the Heir of the Diſſeiſor, when his Entry was tolled, and enfeoffs *A.* againſt whom the Heir recovers; he ſhall have the Right alſo. *Co. L.* 266. *a.* 279. *a.*

So, if a Donee diſcontinues in Fee, and the Donor releaſes his Right to the Diſcontinuee, againſt whom the Iſſue in Tail recovers, the Reverſion remains in the Diſcontinuee; for the whole Right of the Fee was veſted in him by the Releaſe, and the Iſſue can recover only the Eſtate-Tail. *Co. L.* 266. *a.*

But, if the Right was precedent to the defeaſible Poſſeſſion, if the Poſſeſſion be recovered, the Right does not accompany it: as, if a Diſſeiſee diſſeiſes the Heir of the Diſſeiſor, who recovers againſt him; yet the Right remains in the Diſſeiſee. *Ibid.*

So, if the Diſſeiſee diſſeiſes him, and enfeoffs *A.* upon Condition, and enters for the Condition broken, and then the Heir of the Diſſeiſor recovers againſt him. *Ibid.*

If a Woman Dowable diſſeiſes the Heir, who recovers againſt her; her Right to the Dower remains. *Ibid.*

So, if a Right be transferred to a defeaſable Poſſeſſion by Act of Law: as, if *A.* diſſeiſes the Heir of the Diſſeiſor, and enfeoffs the Heir apparent of the Diſſeiſee of full Age, to whom the Right afterwards deſcends, and the Heir of the Diſſeiſor recovers againſt him; yet his Right remains. *Ibid.*

(B. 6.) By Way of Extinguiſhment.

But, if a Leſſee for Years, the Reverſion in Fee, be diſſeiſed, and the Leſſee releaſes his Right to the Diſſeiſor, his Right is extinct, and he in Reverſion may enter immediately; for the Diſſeiſor has no Term, upon which the Right of the Leſſee can veſt, and therefore it ſhall enure by Extinguiſhment. *Co. L.* 276. *a.*

So a Releaſe by a Diſſeiſee, when his Entry is not lawful, enures by Way of Extinguiſhment. *Semb. Ante*, (B. 4.)

As to the Releaſor himſelf, it enures by Way of Extinguiſhment; for his Right, as to himſelf, is extinguiſhed. *Co. L.* 279. *b.*

So a Releaſe by a Diſſeiſee, when his Entry is tolled, or not *congeable*, has the Effect of a Releaſe, which enures by Way of Extinguiſhment; becauſe all former Eſtates, tho' wrongful or defeaſable, ſtand in Force againſt the Releaſee. *Ibid.*

But if any, who had Title againſt the Releaſee before the Releaſe, after ſuch Releaſe brings a Writ of Right, and the *Miſe* is joined upon the mere Right, the Grand Aſſiſe ſhall find for the Releaſee; for he had the Right, tho' the Entry of his Releaſor was not *congeable* at the Time of the Releaſe. *Lit. S.* 478.

So, if he, to whom a Releaſe is made, cannot take the Thing releaſed, it enures by Way of Extinguiſhment: as, if the Lord releaſes to his Tenant all his Right in the Seigniory, or in the Land, his Seigniory is extinct; for the Tenant cannot take the Services of himſelf. *Co. L.* 279. *b.*

So, if he who has a Rent, Common, *&c.* releaſes to the Terre-tenant. *Lit. S.* 480.

(C) Releaſe to enlarge an Eſtate.

(C. 1.) What ſhall be a good one.

RELEASES of an Eſtate in Lands in Tenements enure to enlarge the Eſtate of the Releaſee, or by Way of paſſing the Eſtate.

A Releaſe to enlarge an Eſtate is, when He in Reverſion, or Remainder, releaſes to his Leſſee for Life, to hold to him and his Heirs, or to him and the Heirs of his Body; he thereby has an Eſtate in Fee, or in Tail. *Lit. S.* 465.

So, if he releaſes to his Leſſee for Years, to hold for Life, in Tail, or in Fee. *Ibid.*

Or, to his Tenant by Statute-Staple, Merchant, or *Elegit*. *Co. L.* 273. *b.* 270. *b.*

Or, to his Leſſee at Will. *Lit. S.* 460.

So, if a Leſſee for Life, or for Years, takes Huſband, a Releaſe by the Leſſor to the Huſband in Fee, Tail, *&c.* will be good to enlarge his Eſtate; for the Huſband has the Freehold, or Term, in Right of his Wife. *Co. L.* 273. *b.*

So, if a Leſſee for Life makes a Leaſe for Years, or at Will, and then the Leſſor releaſes to the Leſſee for Life and his Heirs, it will be good; for the Poſſeſſion of the Leſſee for Years, or at Will, is his Poſſeſſion. *Co. L.* 270. *a.*

So, if a Leſſee for 40 Years demiſes for five Years to *B.* who enters; the Leſſor may afterwards releaſe to the firſt Leſſee to enlarge his Eſtate. *Ibid.*

So, if a Leaſe be for Life, or for Years, Remainder for Life, the Leſſor may, by Releaſe to the Leſſee, enlarge his Eſtate. *Co. L.* 273. *a.*

So, if a Man leaſes for Years to *B.* Remainder for Years, and *B.* enters; the Leſſor may, by Releaſe to him in Remainder, enlarge his Eſtate. *Co. L.* 270. *a.*

Or, if he leaſes for Years, Remainder for Life, he may releaſe to him in Remainder. *Co. L.* 273. *a.*

So, if the Leſſor grants the Reverſion, after an Eſtate for Life, or Years, to another for Life, he may releaſe to the Grantee. *Ibid.*

So, if he leaſes to *B.* for Life, Remainder to *A.* for Life, and *B.* dies; he may releaſe to *A.* to enlarge his Eſtate, before his Entry. *Co. L.* 270. *b.*

So, if a Leaſe be for 10 Years, Remainder to *B.* for 20 Years; *B.* may releaſe to the Leſſee, and he ſhall have an Eſtate for 30 Years. *Co. L.* 273. *b.*

(C. 2.)

(C. 2.) What not.

But a Releaſe will not be good to enlarge an Eſtate, if there be not apt Words; as, if He in reverſion, or Remainder, releaſes to his Leſſee for Life, without more, he has no greater Eſtate; for he had it for Life before, and therefore his Eſtate is not enlarged. *Lit. S.* 465.

If he releaſes to his Leſſee at Will, all Demands. *R. Cro. El.* 268.

So, if a Man releaſes to his Leſſee, the Words do not make a greater Eſtate than if the ſame Words were in a Deed of the ſame Eſtate executed with Livery. *Lit. S.* 465.

And therefore if he releaſes to a Leſſee for Years, generally, he has it only for Life, without Words of Inheritance. *Ibid.*

If he releaſes to his Leſſee *pur auter Vie*, he has it for his own Life. *Co. L.* 273. *b.*

So a Releaſe will not be good to enlarge an Eſtate, if he to whom it is made has not a ſufficient Eſtate; as, if Tenant by the Curteſy aſſigns his Eſtate, a Releaſe to him, after the Aſſignment, is not good, tho' there be a Privity between them. *Co. L.* 273. *a.*

Tho' he has an Eſtate by *Eſtoppel*, and Suppoſition of Law: as, if an Infant leaſes to *B.* for Life, who grants his Eſtate with Warranty to *A.* who in a *Dum fuit infra Ætatem* vouches *B.* a Releaſe by the Demandant to *B.* does not enlarge his Eſtate, tho' he is Tenant in Suppoſition of Law. *Co. L.* 273. *a.*

So, if a Releaſe be to a Leſſee for Years before his Entry; for till he enters by Force of his Leaſe he has only an *Intereſſe Termini*, and cannot take a Releaſe to enlarge his Eſtate. *Lit. S.* 459.

So a Releaſe will not be good to enlarge an Eſtate, if there be not a Privity between the Releaſor and Releaſee.

As, if a Man leaſes to *B.* for Life, who Leaſes for Years to another; a Releaſe by the firſt Leſſor to the Leſſee for Years will be void to enlarge his Eſtate, for Want of Privity. *Co. L.* 273. *a.*

So, if a Donee in Tail leaſes for his own Life; a Releaſe by the Donor, to the Leſſee and his Heirs, does not enlarge his Eſtate. *Ibid.*

So, if a Leſſee for 20 Years demiſes to *B.* for 10 Years; a Releaſe by the firſt Leſſor to *B.* does not enlarge his Eſtate. *Ibid.*

So, if a Leſſor releaſes to a Tenant by Sufferance, it is not good to enlarge his Eſtate, for Want of Privity. *Lit. S.* 461. *R.* 2 *Cro.* 169.

(D 1.) Releaſe, which enures by paſſing the Eſtate.

SO a Releaſe of an Eſtate may enure by Way of paſſing the Eſtate.

As, if there are two Parceners, and one of them releaſes all his Right in the Land to his Parcener. *Co. L.* 273. *b.*

So, if there are two Joint-tenants, and one of them releaſes to his Companion; tho' it does not make a Degree. *Ibid.*

So, if a Grant be to Husband and Wife and *B.* and their Heirs; *B.* may releaſe to the Husband alone, or to the Wife alone, and it will enure by Way of paſſing the Eſtate. *Co. L.* 273. *b.* *R.* 1 *And.* 45.

So, if there are three Joint-tenants, and one of them releaſes to one of his Companions. *Co. L.* 273. *b.*

So, if one Joint-tenant confirms the Eſtate of his Companion, with Words of Inheritance. *Lit. S.* 523.

So, if Joint-tenants leaſe for Life, and afterwards one of them releaſes to his Companion, or confirms his Eſtate; the Reverſion is veſted in the Releaſee, and he ſhall have the Rent, or Waſte, without Attornment. *Lit. S.* 574.

If one Joint-tenant levies a Fine, or grants by the Words, *Dedi & Conceſſi*, to his Companion, this will enure by Way of Releaſe, and not as a Grant. *R. Jon.* 55.

So every Conveyance by one Joint-tenant to his Companion enures by Way of Releaſe, and paſſes the Eſtate, and the Releaſee ſhall have the Whole, as by the firſt Feoffment. 2 *Cro.* 696.

Tho' it be by Way of Uſe: As, if the one by Deed indented and inrolled, bargains and ſells to the other. 2 *Cro.* 696. *R. Ray.* 187. 2 *Sand.* 96.

Or, conveys by Fine *Sur Grant and Render*. *R.* 2 *Cro.* 696.

(D. 2.) What ſhall be a good one.

A Releaſe, which enures by paſſing the Eſtate, may paſs the Fee without Words of Inheritance; for he to whom it is made had an Inheritance before. *Co. L.* 273. *b.*

So, if a Leaſe be to two for Years, the one may releaſe to the other before Entry. *Co. L.* 270. *b.*

Or, if the Leaſe be to commence at a future Day, before the Commencement of the Leaſe.

So, if the next Avoidance be granted to two, the one may releaſe to the other before the Church becomes void. *Co. L.* 270. *b.*

So, if a Parcener of a Rent takes to Husband the Terre-tenant; the other Parcener may releaſe to her, and this enures by Way of paſſing the Eſtate, tho' the Rent be ſuſpended. *Co. L.* 273. *b.*

(D. 3.) What not.

But a Releaſe will not be good by Way of paſſing the Eſtate, if there be not a Privity of Eſtate between them at the Time of the Releaſe. *Co. L.* 273. *b.*

(E) Releaſe of Perſonal Things.

(E. 1.) Of all Demands.

THE moſt beneficial Releaſe, which a Man can have, is a Releaſe of *all Demands*. *Lit. S.* 508.

By a Releaſe of *all Demands*, all Actions Real, Perſonal, and Mixt, and all Actions of Appeal, and alſo all Executions, are diſcharged. *Lit. S.* 508.

So, all Covenants, Perſonal or Real: As, Warranty, *&c.* Bonds and Contracts. *Co. L.* 291. *b.*

Tho' the Warranty be future; for it binds his Land *in Præſenti*. 2 *Cro.* 170.

All Recognizances, Statutes-Merchant, and Staple. *Co. L.* 291. *b.*

All Rents, Service, Charge, Seck, or Annuities. *Co. L.* 291. *b.* *Lit. S.* 510.

So, Common of Paſture, and all Profits *aprendre*. *Co. L.* 291. *b.*

All Conditions before Breach, or Performance, or after. *Co. L.* 291. *b.* *Per* 2 *J. Dal.* 105.

So, a Right, or Title to Land. *Lit. S.* 509.

And where there is *Debitum in præſenti*, a Releaſe of *all Demands* diſcharges it, tho' the Money be not yet payable: As, Money to be paid at a future Day by a Bond, Covenant, or Contract. 2 *Cro.* 300.

So where a Rent does not attend the Reverſion, but is in Groſs, ſuch Releaſe diſcharges all Arrears, and all which may afterwards accrue. *Cro. El.* 606. *R.* 2 *Cro.* 487. 2 *Rol.* 408. *l.* 15. *Per* 3 *J.* 1 *Sid.* 141.

As, where a Leſſee aſſigns all his Term to *A.* rendring 50*l. per Ann.* to him, a Releaſe diſcharges all future Payments; for it is due only by the Contract. 2 *Cro.* 487.

But a Releaſe of *all Demands* by the King does not diſcharge a Right, or Title. *Co. L.* 291. *b.*

So, where a Thing is not payable directly by the Contract, and is not yet due; a Releaſe of *all Demands* does not diſcharge it: As, if upon a Submiſſion

to an Award by Bond, *&c.* Money is awarded to be paid at a Day after the Releaſe. *Semb.* 2 *Cro.* 300. *R. cont. Yel.* 214.

So ſuch Releaſe does not diſcharge Rent incident to a Reverſion, not due. *Cont.* 2 *Rol.* 408. *l.* 15. *R. acc. Cro. El.* 606. *Per Hought.* 2 *Cro.* 487. *Per* 3 *J.* 1 *Sid.* 141. *R. H.* 1 *W. & M. B. R. inter Stephens and Snow, Sal.* 578.

Nor a collateral Covenant to be performed *in futuro. R.* 2 *Cro.* 170. *R.* 2 *Mod.* 281.

So a Releaſe of *all Demands*, to the Bail, before Judgment againſt the Principal, does not diſcharge the Recognizance by the Bail. *R.* 2 *Cro.* 170.

So a Releaſe of *all Demands*, by an Husband, does not diſcharge an *Aſſumpſit* to the Wife before the Coverture, to pay her 40*s. per Ann.* after the Death of her Husband. *R.* 2 *Cro.* 222. *Yel.* 156. *Vide Baron and Feme*, (K.)

So a Releaſe of *all Demands*, in general Words, ſhall be reſtrained to the particular Occaſion: As, if an Executor, upon Payment to him of a Legacy, by the Executor of *B.* releaſes all Demands againſt him as Executor for any Matter whatſoever; this does not releaſe a Debt due to his Teſtator from *B. R.* 3 *Lev.* 274. *Sho.* 150. 3 *Mod.* 277. *Carth.* 119. *R.* 2 *Lev.* 215.

So, if he had releaſed *all Demands*, generally. *Per Holt, Sho.* 155.

Or, *all Demands on the Perſonal Eſtate*; for a Debt does not bind it till Judgment. *R. Sal.* 575.

(E. 2.) Claim, Right, *&c.*

So a Releaſe of *all Claims*, extends to all Demands. *Co. L.* 291. *b.*

So, *all Exactions*, ſeems equal to Demands. *Co. L.* 292. *a.*

A Releaſe of *all Right* extends to a Title of Entry. *Co. L.* 265. *a. R.* 8 *Co.* 153. *b.*

So a Releaſe of *all Title* extends to a Right in Land. *R.* 8 *Co.* 153. *b.*

(E. 3.) Actions, *&c.*

By a Releaſe of *all Actions*, Actions Real, Perſonal, or Mixt, are diſcharged.

So, Appeals for Death, Robbery, Mayhem, *&c. Lit. S.* 500.

So, a *Scire facias* upon a Judgment or Fine; for every Writ, Original, or Judicial, upon which the Defendant may plead, is an Action. *Lit. S.* 505, 506.

So a Releaſe of *Actions* diſcharges all Cauſes of Action. *Co. L.* 285. *a.*

A Bond for Payment of Money at a future Day; for, it is *Debitum in præſenti*, and a Right to an Action is in him, tho' he cannot have an Action at preſent. *Lit. S.* 512.

So a Releaſe by an Executor before Probate diſcharges an Action, tho' he cannot have it; for the Right is in him. *Co. L.* 292. *b. Vide Adminiſtration*, (B. 9.)

So, a Releaſe by the Ordinary, tho' he cannot have an Action. *Co. L.* 292. *b.*

So a Releaſe of *all Quarrels* diſcharges all Actions and Cauſes of Action. *Co. L.* 292. *a.*

Or, if he releaſes *omnes Loquelas. Co. L.* 292. *a.*

All Suits, Debates, or Controverſies. Ibid.

So a Releaſe of *all Real Actions* diſcharges Actions Real, or Mixt: As Aſſiſe, *Quare Impedit*, Annuity. *Lit. S.* 492, 493.

So a Releaſe of *Perſonal Actions* diſcharges all Perſonal Actions, and all Mixt, in which Damages were recoverable by the Common Law. *Co. L.* 285.

But a Releaſe of *all Actions* does not releaſe a Right to enter, where Entry is not tolled, *&c. Co. L.* 286. *a.*

So a Man may enter into Land, or take Goods, *&c.* notwithſtanding a Releaſe of *all Actions. Lit. S.* 496, 7, 8.

So He in Remainder, a Feoffee, or other not Privy, ſhall not plead a Releaſe of *Actions* to Tenant for Life, *&c. Co. L.* 285. *b.*

So

So a Diſſeiſor cannot bar an Aſſiſe by a Releaſe of *Real Actions*. *Lit. S.* 494.

So Releaſes of *Perſonal Actions* do not diſcharge Real Actions, in which Damages are given by Statute, if they were not at the Common Law: As, Dower, *Mort d'anceſtor*, *Aiel*, *Entry ſur Diſſeiſin en le Per*, *&c.* *Co. L.* 285. *b.*

So, in an Aſſiſe by Joint-tenants, a Releaſe of *Perſonal Actions* by one of them bars himſelf only. *Co. L.* 285. *a.*

So a Releaſe of *all Actions* before the Day of Payment of a Rent, Annuity, *&c.* is no Bar to Arrears afterwards due. *R. Cro. El.* 897.

So, if an Agreement be, that *A.* ſhall releaſe the Equity of Redemption, and *B.* ſhall pay for it 7*l.* *A.* releaſes *the Equity*, *and all Actions*; this does not diſcharge an Action for the 7*l.* *R.* 1 *Sal.* 171.

[A *Remittit damna* of ſo much, is a Releaſe for ſo much, and is like Acknowledgment of Satisfaction, and there need not be Judgment *quod eat ſine die* as to that Part. *Eyre* v. *Mount*, *H.* 9 *G.* 2. *B. R. H.* 207.]

(E. 4.) Covenants.

So a Releaſe of *all Covenants* is a good Diſcharge of a Covenant before it is broken, as well as after. *Co. L.* 292. *b.*

But, if the Leſſor, after Aſſignment by him to another, releaſes *all Covenants* to his Leſſee, and afterwards the Aſſignee of the Reverſion brings Covenant againſt the Leſſee; ſuch Releaſe before Breach does not diſcharge the Defendant; for the Leſſor, after the Aſſignment, cannot diſcharge the Action, which ſhall be intended to be founded upon a Covenant in Law. *R.* 2 *Lev.* 206, 7.

Vide more concerning *Releaſe* in *Appeal*, (G. 12.)—*Bail*, (Q. 7.)—*Chancery*, (4 L. 1, &c.)—*Damages*, (E. 8.)—*Diſcontinuance*, (C. 1.)—*Fine*, (E. 10.)—*Pleader*, (2 G. 14.—2 V. 11.—2 W. 30, 34.—2 X. 7.—2 Y. 17.—3 B. 19.—3 M. 12.—3 O. 8, 16.)

RELIEF.

Vide Copyhold, (K. 11.)—*Pleader*, (3 K. 17.)

Relief in Equity.

Vide Chancery.

Relief of Poor.

Vide Uſes, (N. 1.)

RELIGION.

Vide Juſtices of Peace, (B. 13, &c.)—*Scotland*, (D. 3.)

The Thirty-nine Articles.

Vide Egliſe, (N. 10.)

REMAINDER.

Vide Copyhold, (C. 11.)—*Deviſe*, (N. 19.)—*Eſtates*, (B. 13, &c.—31.)—*Pleader*, 3 F. 3.)

Remainder-Man.

Vide Receipt, (A. 2.—B. 2.)—*Recovery*, (B. 7.)

Croſs Remainders.

Vide Deviſe, (N. 14, 15.)

Contingent Remainders.

Vide Eſtates, (B. 16.)

Veſted Remainder.

Vide Eſtates, (B. 17.)

REMEDY.

Mutual Remedies.

Vide Pleader, (C. 56.)

Other Remedy.

Vide Abatement, (H. 50.)—*Action upon the Caſe*, (B. 8.)—*Action upon the Caſe upon Aſſumpſit*, (C.)—*For a Deceipt*, (E. 5.)—*Appeal*, (G. 10.)

REMEMBRANCER.

Of the Exchequer.

Vide Courts, (D. 12.)

REMITTER.

(A) Remitter, when it ſhall be.

(A. 1.) If an antient Right, and defeaſible Eſtate come together by Deſcent.

REMITTER is, when an antient Right in Lands or Tenements, which is remediable, and a defeaſible Eſtate, or Title, in the ſame Tenements, come to the ſame Perſon, without Default in him, he ſhall be remitted to his antient and better Right. *Co. L.* 347. *b.*

As, if Tenant in Tail makes a Diſcontinuance, and afterwards diſſeiſes the Diſcontinee, and dies, whereby the Right to the Tail and the defeaſible Eſtate in the Fee deſcend together to his Iſſue, the Iſſue ſhall be remitted to the Eſtate-Tail. *Lit. S.* 659.

So, if Tenant in Tail, after a Diſcontinuance, dies without Iſſue, and he in Remainder enters, and dies ſeiſed, his Iſſue ſhall be remitted. *R. Bend. pl.* 34.

If the Husband diſcontinues the Land of his Wife, and takes back an Eſtate to himſelf in Fee, and dies after his Wife, their Iſſue ſhall be remitted. 2 *Rol.* 420. *l.* 17.

So, if a ſubſequent Right comes to a former, tho' the former was alſo defeaſible. 2 *Cro.* 489. *Vide Poſt*, (B. 1, 2, 3.)

(A. 2.) Or the Right deſcends after the Eſtate.

So there ſhall be a Remitter, if the Right deſcends after the defeaſible Eſtate: As, if Tenant in Tail enfeoffs his Iſſue within Age, and afterwards dies, the Iſſue ſhall be remitted. *Lit. S.* 660. *Hob.* 71.

Tho' the Iſſue came to his full Age in the Life of Tenant in Tail, and did not waive the Feoffment. *Lit. S.* 660.

If Tenant in Tail makes a Feoffment to the Uſe of himſelf for Life, Remainder to his Son in Tail, with Condition; the Son breaks the Condition, whereby the Uſe and Poſſeſſion accrue to his Iſſue, and the Father dies; the Iſſue ſhall be remitted. *R.* 1 *Leo.* 91.

If Tenant in Tail enfeoffs to the Uſe of himſelf for Life, Remainder to his Son (who is the Iſſue in Tail) and afterwards dies, the Son, tho' he takes the Remainder by the *St.* 27 *H.* 8. 10. ſhall be remitted by the Deſcent of the Right. 1 *Leo.* 91. *Vide Poſt*, (C. 5, 6.)

(A. 3.) Or the Eſtate after the Right.

So, if a defeaſible Eſtate comes to him after a Deſcent of the Right, he ſhall be remitted: As, if a Diſcontinuee, after the Death of Tenant in Tail, enfeoffs his Iſſue within Age. *Co. L.* 350. *a.*

(A. 4.) Or by other Act of Law.

So, if the Diſcontinuee being a Woman, the Iſſue in Tail within Age takes her to Wife, he ſhall be remitted to the Whole; for he becomes ſeiſed in her Right, and there are no Moieties between them. *Lit. S.* 665.

So, if a Huſband ſeiſed in Right of his Wife, aliens in Fee, and takes back an Eſtate to him and his Wife, the Wife ſhall be remitted: for the Taking back of the Eſtate ſhall be reputed the Act of the Huſband alone, and not of the Wife who was *Covert*. *R.* 1 *Sid.* 63.

So, if the Diſcontinuee be diſſeiſed, and the Diſſeiſor leaſes to the Huſband and Wife for Life. *Lit. S.* 678.

So, if the Alienee makes a Leaſe to the Huſband and Wife for their Lives, reſerving the Reverſion to himſelf, it ſhall be a Remitter to the Wife, and the Reverſion ſhall be out of the Leſſor. *Lit. S.* 666.

So, if an Eſtate be taken back to the Huſband and Wife, only for the Life of the Husband. *Co. L.* 350. *b.*

Tho' the Eſtate to them be by Indenture. *Co. L.* 353.

Or by Fine; for the Wife ſhall not be examined upon it. *Lit. S.* 669.

So, if Tenant in Tail enfeoffs his Iſſue within Age, and his Wife, and dies, the Iſſue ſhall be remitted to the Whole, upon the Death of Tenant in Tail. *Co. L.* 351. *b.*

So, if Tenant in Tail diſcontinues, and dies, leaving a Daughter his Heir in Tail, who after full Age takes Husband, and the Diſcontinuee releaſes to the Huſband and Wife for their Lives, the Wife ſhall be remitted. *Lit. S.* 671.

So, if a Husband diſcontinues the Land of his Wife by Fine, and the Conuſee renders to the Husband and Wife, tho' this be Error, and the Fine may be avoided; for not being Party to the Original, or Conuſance, the Wife cannot take except in Remainder, yet ſhe ſhall be remitted. *Co. L.* 353. *a.* *Vide Poſt*, (B. 1.)

So, if the Diſcontinuee makes a Feoffment and Livery to the Wife without her Husband. *Lit. S.* 677.

Tho' the Husband afterwards diſagrees to the Feoffment, or the Wife waves it after the Death of her Huſband. *Co. L.* 356. *b.*

So, if Husband and Wife are Tenants in ſpecial Tail by a Gift after Marriage, by which they take by Entireties, and the Husband diſcontinues, and takes back an Eſtate to him and his Wife, they are both remitted; for the One cannot be without the Other. *Lit. S.* 672.

So,

So, ſince the Statute of Uſes, if he takes back an Eſtate by Fine, or Feoffment. *R. Hob.* 255. 1 *Sid.* 63.

So, if Husband and Wife recover againſt Leſſee for Life of the Husband by a Writ of Entry in the *Poſt*. *Semb. per Dyer. Mo.* 32.

If Tenant in Tail makes a Feoffment to the Uſe of himſelf for Life, and then to *A.* for Years, and ſays Nothing of the Fee, and dies, by the Deſcent of the Reverſion the Iſſue ſhall be remitted. 2 *Rol.* 419. *l.* 50.

So, if the Diſcontinuee makes an Eſtate to the Husband for Life, Remainder to the Wife for Life, it ſhall be a Remitter to the Wife, when the Remainder to her comes into Poſſeſſion. *Lit. S.* 680.

So, if Tenant in Tail leaſes to his Eldeſt Son for Life, Remainder to the Younger, and the Eldeſt dies without Iſſue, the Younger Son ſhall be remitted by the Accruing of the Remainder to him. *Lit. S.* 682. *Vide Poſt*, (C. 5.)

Or, if the Heir of the Diſſeiſor leaſes to *A.* for Life, Remainder to the Diſſeiſee, he ſhall be remitted after the Death of *A.* *Lit. S.* 683.

(A. 5.) And if Part of the Eſtate comes to the Right, it ſhall be a Remitter for ſo much.

So, if only Part of a defeaſible Eſtate comes to him, who has a Right, he ſhall be remitted for ſo much: As, if Tenant in Tail to him and the Heirs of his Body upon *A.* begotten, has a Daughter, and afterwards has Iſſue a Daughter by another *Venter*, and diſcontinues, and afterwards diſſeiſes the Diſcontinuee, and dies, whereby the Eſtate deſcends to the two Daughters, the Daughter by *A.* ſhall be remitted to a Moiety. *Lit. S.* 662. *Vide Poſt*, (C. 4.)

So, if Tenant in Tail enfeoffs his Iſſue within Age and *B.* and dies, the Iſſue ſhall be remitted to a Moiety. *Lit. S.* 663.

So, if a Diſſeiſee, when his Entry is *congeable*, takes back an Eſtate (without Indenture, or Matter of Record which eſtops him) from the Diſſeiſor, he ſhall be remitted. *Lit. S.* 693, 694, 696.

Tho' he takes but a Leaſe for Years. *Lit. S.* 695.

So, in a *Formedon* by the Iſſue in Tail, if the Diſcontinuee diſclaims, or pleads *Non-tenure*, it ſhall have the Effect of a Remitter. *Lit. S.* 691, 692.

B) Remitter favoured by Law.

(B. 1.) And therefore it takes Effect; tho' the Eſtate which made the Remitter was voidable.

REMITTER is favoured in Law: For by it the antient Right is reſtored, which is the more worthy and more ſure Title. *Co. L.* 348.

And therefore, if the defeaſible Eſtate was obtained from an Infant, or *Feme Covert*, yet there ſhall be a Remitter: As, if Tenant in Tail diſcontinues, and afterwards diſſeiſes the Diſcontinuee, and dies; his Iſſue ſhall be remitted, tho' the Diſcontinuee was an Infant, or *Covert*. *Co. L.* 348. *a.*

If a Husband diſcontinues the Land of his Wife, by Fine, to *A.* who renders to the Husband and Wife, tho' the Fine be erroneous (for the Wife not being a Party to the Original, or Conuſance, cannot take by the Render a preſent Eſtate) ſhe ſhall be remitted. *Co. L.* 353. *Vide Ante*, (A. 4.)

If the Diſcontinuee enfeoffs the Wife, and makes Livery to her only, tho' the Husband afterwards diſagrees. *Co. L.* 356. *b.* *Vide Ante*, (A. 4.)

If Tenant in Tail to him and the Heirs Females of his Body diſcontinues, and takes back an Eſtate in Fee, and dies, having Iſſue a Daughter, and his Wife *privement enſeint*, the Son born afterwards ſhall not avoid the Remitter to the Daughter. *Co. L.* 357. *a.*

So, if the Diſcontinuee makes a Feoffment to Husband and Wife upon Condition, it ſhall be a Remitter to the Wife, tho' the Feoffor afterwards enters for the Condition broken. *Co. L.* 357. *b.* *Lit. S.* 679.

So, if Tenant in Tail enfeoffs his younger Son and dies, and the younger Son dies, his Wive *privement enſeint*, the eldeſt Son enters, and then the Wife has a Son born, he ſhall not enter; for the Eldeſt was remitted. *R.* 1 *And.* 31.

(B. 2.) A Remitter defeats intirely the wrongful Eſtate.

So, by the Remitter the defeaſible Eſtate ſhall be utterly annulled and defeated. *Lit. S.* 659, 665, 666. *Vide Poſt*, (F.)

And therefore, if he, who has a defeaſible Eſtate grants a Common, Rent, *&c.* out of the Land, and afterwards is remitted, the Land ſhall be diſcharged, for the Eſtate, out of which it iſſued, is totally defeated. *Lit. S.* 660, 686, 687.

So, if he annexes a Condition, *&c.* to the Eſtate made by him. *Lit. S.* 679.

So the Remitter avoids all Charges of a Stranger, or Anceſtor, made after the Commencement of the defeaſible Eſtate. 2 *Rol.* 422. *K.*

So the Eſtate, to which the Remitter is, ſhall be ſubject to Dower, Ward, *&c.* as before. 2 *Rol.* 422. *l.* 15.

But an Eſtate of the Land itſelf, made by him who is remitted, as a Leaſe for Years, ſhall not be defeated by the Remitter. *Co. L.* 349. *a. Dy.* 51. *b.* 2 *Rol.* 422. *l.* 30.

So other Remedy for the Rent, Common, *&c.* is not taken away; for he may have *Annuity*, *&c.* notwithſtanding the Remitter. *Co. L.* 349. *a.*

(B. 3.) And that preſently without Entry.

So the defeaſible Eſtate ſhall be defeated without Entry. *Co. L.* 348. *a. R.* 1 *Rol.* 260. *Hob.* 256. 2 *Rol.* 421. *l.* 30.

For it ſhall be defeated immediately by the Veſting of the Eſtate which makes the Remitter. *Co. L.* 354. *b.* 356. *b. Hob.* 255.

Tho' it veſts by Act of Law, without the Aſſent of the Party. *Co. L.* 358. *b.*

So, if the Eſtate veſts, He cannot wave the Remitter; for he ſhall be remitted *nolens volens*. *R.* 2 *Cro.* 489. For the Benefit of him in Remainder, otherwiſe not. 2 *Rol.* 422. *l.* 40.

Tho' the antient Eſtate and the laſt were both waveable, he cannot wave the Remitter, where it would be to the Prejudice of another. *Co. L.* 357. *Hob.* 71. 255. *Mo.* 872. *Per* 3 *J. Montague cont.* 2 *Cro.* 489. 2 *Rol.* 36. *Vide Baron and Feme*, (T.)

So, if the Remitter be prevented by the Default of the Father, his Heir may be remitted: As, if the Diſcontinuee enfeoffs Tenant in Tail of full Age, who ſhall not be remited contrary to his own Act, yet his Iſſue ſhall be remitted.

If Husband and Wife levy a Fine, and afterwards take back an Eſtate to them; tho' the Wife, being *Particeps* by her Examination upon the Fine, cannot be remitted, her Iſſue ſhall. *Co. L.* 353. *b. Vide Poſt*, (C. 6.)

So, if Tenant in Tail leaſes to his eldeſt Son for Life, Remainder to a younger Son for Life, and dies, and then the eldeſt Son dies without Iſſue, the Younger ſhall be remitted; tho' the Eldeſt, who accepted the Leaſe, could not. *Lit. S.* 682.

(B. 4.) A Remitter to the Principal remits to the Appendant.

So, if a Man be remitted to the Principal, he ſhall be remitted to all Things appendant, *&c.* As, if Tenant in Tail of a Manor, with an Advowſon, *&c.* appendant, enfeoffs *B.* who re-enfeoffs him, ſaving the Advowſon; the Iſſue ſhall be remitted to the Manor, and alſo to the Advowſon. *Co. L.* 349. *b.*

So, if Tenant in Tail was diſſeiſed by *A.* who ſuffers an Uſurpation, and the Diſſeiſee enters, he ſhall be remitted to the Manor with the Advowſon. *Co. L.* 349. *b.*

(B. 5.) To the particular Eſtate, remits to him in the Reverſion or Remainder.

So a Remitter to a particular Eſtate ſhall be a Remitter to all in Remainder, or Reverſion. *Lit. S.* 673. *Hob.* 255. *Pol.* 397.

Tho' the Remainder veſts by the Statute of Uſes. 27 *H.* 8. 10. *Hob.* 256.

So, if a *Meſne* Remainder be barred, it ſhall be a Remitter to all other Remainders, or the Reverſion: As, if *A.* be Tenant for Life, Remainder to *B.* in Tail, Remainder to *C.* in Tail, Remainder to *D.* in Fee, and *A.* is diſſeiſed by *E.* to whom *B.* releaſes with Warranty, whereby the Eſtate-Tail is barred, if *A.* afterwards re-enters, the Remainders to *C.* and *D.* are remitted, tho' the Diſſeiſor has a Fee, determinable upon the Death of *B.* without Iſſue. *Co. L.* 354. *b.*

So, if Tenant in Tail, Remainder in *B.* in Fee, diſcontinues, and afterwards takes back an Eſtate to him in Tail, Remainder to the King in Fee, and dies, his Iſſue ſhall be remitted, and the Remainder to *B.* tho' the Remainder to the King be thereby deveſted. *Co. L.* 354. *b.*

But, if Tenant in Tail dies, after Diſcontinuance, without Iſſue; and he in Remainder diſſeiſes the Diſcontinuee, and dies without Iſſue, He in the ſecond Remainder cannot enter. *R. Bend. pl.* 34.

(C) When there ſhall be no Remitter.

(C. 1.) To a bare Title.

BUT a Remitter muſt be to the antient Right, and ſhall not be to a naked Title: As, if a Defeaſible Eſtate be in him, who has Title to enter for a Condition broken, he ſhall not be remitted to the Eſtate, which he had before the Condition made. *Co. L.* 347. *b.* 2 *Rol.* 420. *G.*

Or, if he has Title to enter for *Mortmain*. *Co. L.* 347. *b.* 348. *a.*

Or, upon an Aſſent to a Raviſher, for it is a bare Title of Entry for which no Action is given. *Co. L.* 348. *a.*

But, if an Infant makes a Feoffment of the Eſtate of his Wife, and within Age takes back to him and his Wife; tho' he had only a Title to enter for his Nonage, he ſhall be remitted. 2 *Rol.* 419. *l.* 30.

So, if a Woman enfeoffs *A.* and *B.* upon Condition to reinfeoff her upon Requeſt, and takes Husband, and upon Requeſt *A.* refuſes, but *B.* enfeoffs them of the Whole, ſhe ſhall be remitted to the Moiety of *A.* to which ſhe had Title of Entry for the Condition broken. 2 *Rol.* 419. *l.* 35.

(C. 2.) To an irremediable Right.

So there ſhall be no Remitter to a Right, for which the Party has no Remedy by Action. *Co. L.* 348. *a.* 349. *b.*

As, if *B.* purchaſes an Advowſon, and afterwards ſuffers an Uſurpation, and ſix Months paſs, and then the Uſurper enfeoffs *B.* and his Heirs, the Heir of *B.* ſhall not be remitted, for tho' he had Right, he had not any Remedy by Action. *Co. L.* 349. *b.*

So, if Tenant in Tail enfeoffs *B.* of a Manor with an Advowſon, *&c.* appendant, and afterwards *B.* grants to him and his Heirs the Advowſon, or other Thing appendant, and he dies; his Iſſue ſhall not be remitted till he recontinues the Manor; for there was no Remedy by Action for the Advowſon, *&c.* till the Manor was recontinued. *Co. L.* 349. *b.*

So, if he makes a Diſcontinuance, and afterwards diſſeiſes the Diſcontinuee, and levies a Fine, and dies within five Years, the Diſcontinuee may enter; for

the Iſſue is not remitted, his Right being barred by the Fine. *R. Bend. pl.* 156. *Mo.* 115. 1 *And.* 43.

So, if there be a Grandfather, Tenant for Life, Remainder to a Father in Tail, and they join in a Feoffment with Warranty, and the Warranty deſcends, with the Right, to the Son; he ſhall not be remitted, being bound by the Warranty. *R.* 1 *And.* 286. 2 *Rol.* 421. *l.* 40.

(C. 3.) To a bare Right of Action.

So, there ſhall be no Remitter, where the Party has no Right but only to have an Action: As, if Tenant in Tail ſuffers a Common Recovery, which was erroneous, and afterwards diſſeiſes the Recoveror, and dies, his Iſſue ſhall not be remitted; for tho' he has a Right to have a Writ of Error for Reverſal of the Recovery, yet, till the Reverſal, he has no Right to the Eſtate-Tail. *Co. L.* 349. *b.*

(C. 4.) If the Freehold does not accrue to the Right.

So, there ſhall be no Remitter, except where an Eſtate of Freehold comes to him, who has the antient Right, and therefore if Tenant in Tail before the *St.* 27 *H.* 8. 10. had made a Feoffment to the Uſe of himſelf in Fee, or Tail, the Iſſue was not remitted. *Dy.* 24. *a.*

So, there ſhall be no Remitter till the Freehold comes in Poſſeſſion to him, who has the Right: As, if Diſcontinuee of a Husband re-grants an Eſtate to the Husband for Life, Remainder to the Wife; ſhe ſhall not be remitted during the Life of the Husband. *Lit. S.* 680. *R. Hob.* 71.

If Tenant in Tail enfeoffs *A.* to the Uſe of himſelf for Life, and afterwards to *A.* till he raiſes 500*l.* and then to his Son in Fee, who enters after the Death of his Father; he ſhall not be remitted till *A.* has levied the 500*l.* *R.* 1 *Leo.* 7.

So, there ſhall be no Remitter but only as to ſo much as comes to him without his Default: As, if Tenant in Tail to him and the Heirs of his Body by *A.* has Iſſue a Daughter, and by another Wife has Iſſue another Daughter, and then diſcontinues, and diſſeiſes the Diſcontinuee, and dies, his Daughter by *A.* ſhall be remitted only to a Moiety; for a Moiety only deſcended to her. *Lit. S.* 662. *Vide ante*, (A. 5.)

So, if Tenant in Tail enfeoffs his Iſſue within Age and a Stranger, and dies, tho' Joint-tenants are ſeiſed *pro indiviſo* of the Whole, yet the Iſſue ſhall be remitted only to a Moiety; for he has no Right to more. *Co. L.* 350. *a.*

If Husband diſcontinues, and takes back an Eſtate to him and his Wife and to *A.* the Wife is remitted only to a Moiety. *Lit. S.* 676.

(C. 5.) If there was Default in him who takes the defeaſible Eſtate.

So, there ſhall be no Remitter, if he, who has the defeaſible Eſtate was *Particeps Criminis*, and conſented to the making of the defeaſible Eſtate: And therefore, if Tenant in Tail enfeoffs his Iſſue of full Age, and dies, the Iſſue ſhall not be remitted; for it was his Folly to accept the Feoffment. *Co. L.* 348. *b.* 350. *b.*

Or, if the Iſſue at full Age takes the Diſcontinuee to Wife. *Lit. S.* 665.

Or, if the Iſſue joins with his Father in a Diſſeiſin to the Diſcontinuee. *Co. L.* 357. *b.*

If a Stranger enfeoffs a Tenant after Poſſibility, in Remainder after an Eſtate for Life, and the Leſſee dies, he in Remainder ſhall not be remitted. 2 *Rol.* 420. *l.* 25.

So, if Husband and Wife levy a Fine to *B.* upon which the Wife is examined, and afterwards they take back an Eſtate to them, the Wife ſhall not be remitted,

mitted, for by her Examination upon the Fine, ſhe became *Particeps*. *Co. L.* 353. *b.*

Or, if they make a Feoffment to the Uſe of themſelves. *Semb.* 1 *Lev.* 49.

If a Husband diſcontinues the Land of his Wife, and *A.* diſſeiſes the Diſcontinuee by *Covin* of the Husband and alſo of his Wife, and makes a Leaſe to them, the Wife ſhall not be remitted. *Lit. S.* 678. 2 *And.* 39.

Tho' the Wife was not preſent, but only aſſented to the Diſſeiſin, tho' by ſuch Aſſent ſhe be not a Diſſeiſoreſs. *Co. L.* 357. *b.*

So, if he, who has Right, procures a Diſſeiſin by *A.* againſt whom he recovers. 2 *Rol.* 420. *l.* 7.

Tenant for Life, Remainder to *A.* for Life, *A.* diſſeiſes the Tenant for Life, who dies, *A.* ſhall not be remitted. *Cont.* 2 *Rol.* 420. *l.* 30.

So, if Tenant in Tail lets to *B.* for Life, Remainder to his Iſſue, by Deed, and the Iſſue agrees to the Remainder in the Life of his Father, by ſigning a Counterpart of the Deed, *&c.* the Iſſue ſhall not be remitted, tho' the Freehold is caſt upon him. *Co. L.* 359. *b.*

If Leſſee for Life ſurrenders to *D.* in Remainder, *&c.* and *D.* accepts it, he ſhall not be remitted. *R. Skin.* 3, 63.

So, if Tenant in Tail enfeoffs his Iſſue and *B.* by Deed, and makes Livery to *B.* only, yet, if the Iſſue ſigns the Deed, he ſhall not be remitted on the Death of *B.* tho' the Freehold is caſt upon him by Survivorſhip. *Co. L.* 359. *b.*

So, if *B.* dies in the Life of the Tenant in Tail, and the Iſſue afterwards enters, and takes the Profits. *Lit. S.* 684.

Or agrees to the Feoffment in the Life of his Father. *Co. L.* 359.

If there be Father, Tenant for Life, Remainder to the Son for Life, Remainder to the Father in Tail, and the Father and Son join in a Feoffment to an Uncle of the Son, who dies without Iſſue, ſo that the Son is his Heir, he ſhall not be remitted during his Life; for he joined in the Feoffment. *Dub.* 1 *Leo.* 37.

But if a Party to a wrongful Act, or an Eſtate taken back, be an Infant, or *Feme Covert*, no Default ſhall be adjudged in him, or her, generally. *Vide ante*, (A. 4.)

As, if Husband ſeiſed in Right of his Wife for the Life of the Wife, makes a Feoffment to the Uſe of the Wife for Life; upon the Death of the Husband, ſhe ſhall be remitted. *R.* 3 *Leo.* 93.

So, where an Eſtate of Freehold is caſt upon him, or her, by Act of Law, no Default ſhall be adjudged in him, or her: As, if a Remainder was limited to him, or her without his, or her Aſſent, and the particular Eſtate determines. *Lit. S.* 682, 683. 1 *Leo.* 91. *Vide ante*, (A. 4.)

So, if Tenant in Tail enfeoffs his Iſſue and *B.* by Deed, and makes Livery to *B.* and the Iſſue was not conuſant, nor took the Profits in the Life of his Father, he ſhall be remitted, if he ſurvives *B.* *Lit. S.* 684. Or, if the Iſſue was within Age. 2 *Rol.* 419. *l.* 25.

So, if a Diſſeiſor lets to the Diſſeiſee for Life, by Indenture, and makes Livery, the Diſſeiſee ſhall be remitted contrary to his Acceptance. *R. Cro. El.* 20.

(C. 6.) If he takes by *St.* 27 *H.* 8. 10. which executes the Uſe in the ſame Plight as it was limited.

So, ſince the *St.* 27 *H.* 8. 10. If Tenant in Tail makes a Feoffment to the Uſe of his Iſſue within Age, and dies, the Iſſue ſhall not be remitted; for the Statute executes the Poſſeſſion to the Party *in the ſame Plight, Manner, and Form, as the Uſe was limited*. *Co. L.* 348. *b.* *Hob.* 298. *Dub. Dy.* 23. *b.* 54. *R. Dy.* 54. *b.* 77. *b.* 106. 1 *Rol.* 260.

And tho' it be found by Office that there was a Remitter, it is of no Avail. *R. Dy.* 106.

Tho' the Iſſue takes by Remainder in an Uſe limited to him. *Semb. Dy.* 129. *a.*

So, if the Iſſue enters, and is ſeiſed by the *St.* 27 *H.* 8. he cannot, by the Entry of the Feoffees afterwards, be remitted. *R. Dy.* 330. *a.*

But, if the Iſſue, in ſuch Caſe, waives the Poſſeſſion, and recovers in *Formedon* againſt the Feoffees of the Tenant in Tail, as he may, he ſhall be remitted. *Co. L.* 348. *b.* 2 *Rol.* 10.

Or, if the Iſſue takes by the Feoffment to his Uſe, and does not bring *Formedon*; after his Death, his Iſſue ſhall be remitted; for an Eſtate in Fee at the Common Law deſcends to him. *Co. L.* 348. *b.* *Dy.* 54. 1 *Leo.* 91.

So, if the Huſband makes a Feoffment of the Land of his Wife, to the Uſe of himſelf and his Wife, ſhe ſhall be remitted; for ſhe has her Election to take by the *St.* 27 *H.* 8. or to enter by the 32 *H.* 8. 28. upon which ſhe ſhall be remitted. *R. Dy.* 191. *b.*

So the Iſſue of the Iſſue, who takes by Force of the *St.* 27 *H.* 8. 10. ſhall be remitted. *Hob.* 255. 1 *Rol.* 260. 2 *Rol.* 419. *l.* 45.

So, if he who had a defeaſible Eſtate has a Verdict for him, tho' falſely, and he who has Right claims under the Recovery, he ſhall not be remitted: As, if a younger Brother diſſeiſes his Elder, and in an Aſſiſe againſt him the Plaintiff is barred by a falſe Verdict, and before Attaint the younger dies without Iſſue, whereby the Land deſcends to the elder; he ſhall not be remitted contrary to the Verdict. *R. Dy.* 5. *a.*

But if Tenant in Tail levies a Fine, or ſuffers a common Recovery, which is a Bar to the Entail, the Iſſue ſhall not be remitted, tho' the Land afterwards comes to him. *Vide ante*, (C. 3.)

Tho' the Eſtate deſcends to the Iſſue before Execution of the Recovery. *Co. L.* 361. *b.* *Dy.* 35. *a.*

(C. 7.) No Remitter to a Term for Years.

If Leſſee for Years, to commence at a future Day, enters before the Day, which is a Diſſeiſin, and continues in Poſſeſſion till the Term commences, he ſhall not be remitted; for the Law does not diveſt the Fee, for a Term, which is of no Eſteem. 2 *Rol.* 420. *l.* 35.

(D) The Grounds of a Remitter.

THE principal Cauſe for a Remitter is, that there is not any Perſon, againſt whom he, who has Right, can ſue his Action: for he cannot ſue himſelf. *Lit. S.* 661.

And becauſe he who has Right cannot ſue, nor enter upon himſelf, the Remitter has the Effect, which an Entry, if it was *congeable*, would have, and reveſts the Eſtate accordingly. *Hob.* 256, 257. 2 *Rol.* 37.

And if he had but a Right of Action, by the Remitter he ſhall be in, in the ſame Manner as if he had recovered. 2 *Rol.* 37.

(E) How it operates.

IF Diſcontinuee of Tenant in Tail enfeoffs his Iſſue within Age and *B.* and makes Livery of the Whole to the Iſſue, he ſhall be remitted but for a Moiety; for it operates as a Feoffment in the firſt Place, and then as a Remitter. *Co. L.* 350. *a.*

If a defeaſible Eſtate deſcends to two Daughters, and one only enters into the Whole, and dies, her Iſſue ſhall be remitted only to a Moiety, and the other Moiety ſhall be recovered by a *Formedon* by the other Daughter. *R. Bend. pl.* 34.

But,

But, if the defeaſible Eſtate deſcended to two Daughters, of whom the Eldeſt has the antient Right, they take as Tenants in Common, and not as Parceners; for there ſhall be a Remitter for a Moiety immediately. *Lit. S.* 662.

(F) What Effect it ſhall have.

BY the Remitter all Eſtates made by him, who had the defeaſible Eſtate, are avoided.

And therefore, if Tenant in Tail makes a Feoffment to his Iſſue, and dies, and his Iſſue lets for Years, and dies, whereby the Iſſue of the Iſſue is remitted, he ſhall avoid the Leaſe, which becomes *null*, without Entry. 1 *Rol.* 260. *R. Lane* 94.

And tho' the Iſſue of the Iſſue accepts Rent upon the Leaſe, it does not affirm it; for it was abſolutely void by the Remitter. 1 *Rol.* 260. *R. Mo.* 846.

So, if Tenant in Tail enfeoffs another to the Uſe of himſelf for Life, and afterwards to *B.* for Years; his Iſſue being remitted to the Reverſion by Deſcent, ſhall avoid the Term to *B.* 2 *Rol.* 419. *l.* 50.

But, if Huſband and Wife are ſeiſed to them and the Heirs of the Body of the Huſband, Remainder to *A. &c.* and the Huſband levies a Fine, and dies, the Wife ſhall be remitted and all the Remainders; but upon the Death of the Wife, the Effect of the Remitter ceaſes. *Hob.* 257.

But, if Huſband and Wife are ſeiſed to them, and the Heirs of their Bodies, Remainder to *A. &c.* and the Huſband levies a Fine to the Uſe of himſelf and his Wife, and the Heirs of their Bodies, whereby they are remitted, and the Remainders revived; if the Wife dies in the Life of the Huſband, the Remitter ceaſes, and the Remainder is turned to a Right. *R. Hob.* 255.

So, if Tenant in Tail diſcontinues, and is afterwards attainted for High Treaſon, whereby his Eſtate and alſo the antient Right of Entail are forfeited to the King upon Office found; yet, if he dies before Office, ſo that the Right and Eſtate deſcend to the Iſſue who is remitted; by the Office found the Remitter ceaſes. *R. Hob.* 347. 2 *Rol.* 508, 9. *Pal.* 351. 1 *Jon.* 79.

REMOVAL.

Vide Franchiſes, (F. 30, &c.)

Removal of a Replevin.

Vide Pleader, (3 K. 6, &c.)

—— of a Record.

Vide Record, (G.)

RENT.

(A) Rent.

RENT is a Sum which the Tenant renders out of the Profits of Lands or Tenements, which he enjoys. *Co. L.* 142.

(B) Reſervation.

(B. 1.) How it may be made.

RENT may be reſerved annually, or every ſecond or third Year. *Co. L.* 47. *a.*

So, it may be reſerved upon a Leaſe of Lands by *Parol*, or Deed-Poll. *Co. L.* 142. *b.* 143.

But, if a Man makes a Feoffment, or a Tenant for Life, or Years, grants all his Eſtate, he cannot reſerve a Rent without Deed. 2 *Rol.* 448. *H. Lit. S.* 215.

Nor where a Conveyance enures by Way of Extinguiſhment: As, upon a Surrender, Releaſe, *&c.* 2 *Rol.* 448. *I.*

(B. 2.) By what Words.

A Rent may be reſerved by the Word *Reſervando*. *Co. L.* 47. *a.*

Or the Words, *reddendo, ſolvendo, faciendo, &c. Co. L.* 47. *a.* 141. *b.*

Inveniendo, dummodo, &c. Co. L. 47. *a.*

So a Demiſe, *provided that the Leſſee ſhall pay*, is a good Reſervation. *R.* 2 *Rol.* 449. *l.* 35.

Or, if a Man, *in Conſideration of Rent after mentioned*, lets, and the Leſſee covenants to pay ſo much Rent, without any *Reddendum*, it will be a good Reſervation. *R.* 2 *Rol.* 449. *l.* 40.

So a Deviſe upon Condition that he pay Yearly ſo much to *A.* will be a Rent to him, and not a Sum in Groſs. *R.* 1 *Leo.* 137.

(B. 3.) Out of what Thing.

Every Rent ought to be reſerved out of Lands and Tenements, which are manurable, and upon which the Leſſor may diſtrain. *Co. L.* 47. *a.* 142. *a.*

So out of a Demiſe of the Veſture, or Herbage of Land. *Co. L.* 47. *a.* 142. *a.*

Or Grant of a Reverſion, or Remainder, for the Poſſibility that it may come into Poſſeſſion. *Co. L.* 47. *a.*

Or a Conveyance by Way of Uſe; for by the *St.* 27 *H.* 8. 10. The Poſſeſſion is executed to the Uſe. *R.* 2 *Co.* 54. *a.* 72. *b.* 2 *Rol.* 448. *l.* 10. 2 *Inſt.* 673.

So it may be reſerved upon a Grant of a future Intereſt. 2 *Rol.* 446. *l.* 20.

But a Rent cannot be reſerved out of an incorporeal Inheritance: As, out of a Common, Advowſon, Office, *&c. Co. L.* 47. *a.* 142. *a.* 144. *a.*

Or a Fair, Market, Liberty, or other Franchiſe, or Privilege. *Co. L.* 47. *a.* 5 *Co.* 3. *a.*

Or out of Tithes. *Co. L.* 47. *a.* *R.* 2 *Rol.* 446. *l.* 35.

A Corody, Mulcture of a Mill, *&c. Co. L.* 47. *a.*

So Rent cannot be reſerved upon a Releaſe of a Right to Land. *Co. L.* 144. *a.*

If Land and an incorporeal Thing be demiſed together, rendring Rent, it ſhall iſſue wholly out of the Land in Point of Remedy. 2 *Cro.* 453. 2 *Rol.* 451. *l.* 20.

And, if an incorporeal Thing only be demiſed, the Rent ſhall not go to the Grantee of the Reverſion without expreſs Words; for it is not incident to the Reverſion. *Co. L.* 47. *a.*

Yet, if Rent be reſerved upon a Demiſe for Years of an incorporeal Inheritance, as Common, Tithes, *&c.* Debt lies for it, in reſpect of the Contract. *Co. L.* 47. *a.*

Otherwiſe upon a Demiſe for Life.* *Co. L.* 47. *a.*

So ſuch Rent deſcends to the Heir with the Reverſion. *Semb.* 2 *Sand.* 304. *Semb. Ray.* 18.

* By the *St.* 8 *An.* 14. Debt may be brought for Rent on a Demiſe for Life.

And,

And, if the Term be aſſigned, Acceptance of Rent from the Aſſignee binds the Leſſor. *Semb.* 2 *Sand.* 304. *Ray.* 195.

So, if the Demiſe was of a Barn, or Land, with Tithes, and the Tithes are evicted, the Rent ſhall be apportioned; for it was greater in reſpect of the Tithes. 2 *Cro.* 453. 2 *Sand.* 304.

(B. 4.) Of what Thing.

Rent may be reſerved not only of Money, but alſo of any other Profit, which lies in *Render*. *Co. L.* 142. *a.*

As, a Roſe, Pepper, Comine, Wheat, *&c.* *Ibid.*

So, of a Horſe, Hawk, Hen, Capon, *&c.* *Ibid.*

Of Spurs, Bows, *&c.* *Ibid.*

So, of a Journey *Tempore Meſſis*, or Labour by the Leſſee, or with a Horſe, *&c.* 2 *Sand.* 165.

But it cannot be reſerved of Parcel of the Profits demiſed: As, reſerving the the Veſture, or Herbage of the Land. *Co. L.* 47. *a.*

(B. 5.) To whom Rent ſhall be reſerved.

If the Reſervation of a Rent be general, the Law generally directs it according to the Intent and the Nature of the Thing demiſed. *Per Hale*, 1 *Vent.* 161.

As, if Tenant in Tail demiſes for Years, rendring Rent to him and his Heirs, this goes to the Heir in Tail. *R.* 1 *Vent.* 162.

If Tenant for Life, with Power to make Leaſes, demiſes, rendring Rent to him, his Heirs and Aſſigns, it ſhall be adjudged to him in Remainder. *R.* 8 *Co.* 70. *b.* 1 *Vent.* 162.

If a Copyholder, by Licence, leaſes, rendring Rent to him and his Wife, and his Heirs, where by the Cuſtom the Wife has her *Free Bench*, the Wife ſhall have the Rent, as incident to the Reverſion. *R.* 1 *Vent.* 163.

If Leſſee for 100 Years makes a Leaſe for 50 Years rendring Rent to him and his Heirs, it ſhall go to his Executor or Adminiſtrator. *Per Hale*, 1 *Vent.* 162.

So, if a Man ſeiſed in Fee lets for Years, rendring Rent *during the Term* to him, his Executors and Aſſigns, it ſhall go to his Aſſignee, or Heir; for the Intent appears that it ſhall be paid during the Term, and the Law directs to whom. *R. cont.* 12 *Co.* 36. *Cro. El.* 217. 2 *Rol.* 450. *l.* 30. 451. *l.* 10. *Ow.* 9. *But no Mention in Roll* 450. *and Owen, that the Reſervation was during the Term, and the Caſe* 2 *Rol.* 451. *is falſely reported, as appears Lat.* 99. 2 *Sand.* 370. *R. acc. Cro. El.* 832. 5 *Co.* 111. *Mallory's Caſe. Acc. Cro. Car.* 289. *R. Lat.* 255, 264. *R. per tot' Cur.* 2 *Sand.* 370. 1 *Vent.* 148, 161. *Ray.* 213. 2 *Lev.* 13.

So, if a Biſhop lets, rendring Rent during the Term to him, or his Succeſſors, in the Diſjunctive. *R.* 5 *Co.* 111. *b.*

So, if Tenant in Fee lets, rendring Rent generally, without ſaying to whom, it goes to his Heir. *Co. L.* 47. *a. Per Kingmill*, 21 *H.* 7. 25. *b. Per Cholmly*, 27 *H.* 8. 15. *a. Dub. per Knightly*, 27 *H.* 8. 16. *a. Per* 2 *J. Dy.* 45. *a. Dub.* 2 *Rol.* 450. *l.* 20.

Or, rendring Rent to him, or his Heirs, in the Diſjunctive. *Cont. Co. L.* 214. *a.*

Or, to him ſo much Money, and after his Death, a Roſe, *&c.* to his Heir. *Co. L.* 213. *b.*

So a Reſervation to the Heir will be good, without reſerving the Rent to himſelf: As, if a Man lets for Years to commence after his Death, rendring Rent to his Heir. *R.* 2 *Rol.* 447. *l.* 10. *Cont. Co. L.* 99. *b.* 143. *b.* 213. *b.*

So, if Tenant in Tail lets, rendring Rent to his Heir, it will be good; for he takes by Purchaſe after the Death of the Donee. *D.* 2 *Rol.* 447. *l.* 15. *Cont. Co. L.* 99. *b. Acc. Hard.* 90.

So, if Tenant in Tail to him and the Heirs Male of his Father, lets, rendring Rent to him, his Heirs and Aſſigns; the Rent ſhall go to the Heir Male of the Body of his Father, tho' he be not Heir to the Leſſor; for it is incident to the Reverſion. *R. Hard.* 91, 95.

But, if a Man lets, rendring Rent to himſelf, without more, it does not go to his Heir. *Co. L.* 47. *a.* *Per Moile, Lit. cont.* 10 *Ed.* 4. 18. *b.* *Dy.* 45. *a.* 2 *Rol.* 450. *l.* 25.

Or to him and his Aſſigns. *Co. L.* 47. *a.*

Or to him, his Executors and Aſſigns, it does not go to the Heir, or Executor, but determines upon the Death of the Leſſor. *R. Ow.* 9. *Cro. El.* 217. 2 *Rol.* 450. *l.* 27. 12 *Co.* 36. *Semb. cont.* 1 *Vent.* 161, 2.

Or to him and his Aſſigns to have an *Heriot*, or 40*s.* at the Election of him, his Heirs or Aſſigns. *R.* 1 *Mod.* 217.

Or to him and his Executors. *Co. L.* 47. *a.*

So, if the Reſervation be during the Term to himſelf and *B.* and the Survivor of them, it does not go to the Heir; for the expreſs Mention of him and *B.* ſhews the Intent that no other ſhall have it. *Per* 3 *J. Berkley cont. Cro. Car.* 290. And upon Error it was compounded. 2 *Rol.* 450. *l.* 50. *Jon.* 309.

Yet on a Grant of Copyhold, rendering to the Lord ſo much Rent *et Servitia conſueta*, the Rent goes to the Heir. *R.* 2 *Rol.* 450. *l.* 40.

So a Rent cannot be reſerved to a Stranger. *Co. L.* 47. 143. *b.* *Lit. S.* 346.

As, if a Man reſerves Rent to himſelf and his Wife, it will be void, as to the Wife. 2 *Rol.* 447. *l.* 32. *Jon.* 309.

So, if before the Statute *W.* 2. 13 *Ed.* 1. he had made a Feoffment to hold of him and his Wife. 2 *Rol.* 447. *l.* 45.

So, if he reſerves Rent to his Heir, without ſaying to him and his Heirs. *Co. L.* 213. *b.*

If he reſerves Rent to him, *or* his Heir, it will be good to him for his Life, and void to the Heir. *Co. L.* 214. *a.*

So, if a Man and *B.* his Son, reciting that *B.* is his Heir apparent, let for Years, to commence after the Death of the Father (who was ſole ſeiſed) and rendring Rent to the ſaid *B.* it will be void; for a Reſervation to him by his proper Name, and not to him, as Heir, is the ſame as if it was to a Stranger. *R.* 2 *Rol.* 447. *l.* 20.

Yet the King may make a Reſervation of a Rent to a Stranger. 2 *Rol.* 447. *l.* 35. *Semb. Co. L.* 143. *b.*

So a Man may reſerve a Rent to himſelf for his Life, and a different Rent to his Heir. *Co. L.* 213. *b.* 214. *a.*

(B 6.) Rent follows the Nature of the Land.

The Rent reſerved follows the Nature of the Land, and therefore, if two Joint-tenants let by Deed-Poll, or *Parol*, rendring Rent to one, it ſhall go to both. *Co. L.* 47. *a.*

If two Joint-tenants let by Deed to *A.* rendring to them 10*s. per Ann.* and only One ſeals the Deed, the Demiſe ſhall be but of a Moiety, rendring only 5*s. per Ann.* *R.* 2 *Rol.* 453. *l.* 35.

If a Man ſeiſed as Heir of the Part of his Mother lets, rendring Rent to him and his Heirs, it goes to the Heir of the Part of the Mother. *Hard.* 90.

So, if ſeiſed of Land of the Nature of *Borough-Engliſh*, it goes to the youngeſt Son. *Hard.* 90.

(B. 7.) The Reſervation ſhall be certain.

So the Reſervation ought to be certain; for, if a Man demiſes at Will, rendring *ſecundum Ratam* 18 *l. per Ann. quamdiu* the Demiſe continues, it will be void; for it does not appear what Rent he ſhall pay in certain, or at what Time. *R.* 4 *Mod.* 79. 1 *Sal.* 262.

So

So, if the Demiſe be of ſeveral Houſes rendring 5*l.* Rent, *viz.* for one Houſe 20*s.* for another 40*s.* and for another 40*s.* with a Clauſe for Re-Entry upon Non-payment of the ſame Rent, or any Part, it will be an intire Rent, and the *viz.* cannot make a Severance. 2 *Rol.* 448. *l.* 30. 5 *Co.* 34. *b.* *R. Cont. Mo.* 52.

But a Leaſe of three Manors, rendring for one 5*l.* for another 6*l.* for another 10*l.* with Condition of Re-Entry for Non-payment of any Parcel, makes ſeveral Demiſes, and ſeveral Rents, for which there ſhall be ſeveral Avowries. *Dy.* 309. 2 *Rol.* 448. *l.* 20. 5 *Co.* 55.

If a Leaſe be by a Huſband, rendring Rent to him for Life, and to his Wife for Life, it will be a Reſervation during the Life of the Survivor. *R. Mo.* 876.

(B. 8.) How the Rent ſhall be paid.

So, if a Man demiſes for five Years, rendring 100*l.* to be paid by equal Portions during the Term, it ſhall be paid Yearly, tho' that Word was omitted. 2 *Rol.* 449. *l.* 50.

Or, rendring Rent, to be paid at the uſual Feaſts, without ſaying which, it ſhall be conſtrued at *Michaelmas* and *Lady-day*. *R.* 2 *Rol.* 450. *l.* 5.

Or to be paid at ſuch Feaſts, without ſaying *equally*, it ſhall be paid equally 2 *Rol.* 450. *l.* 15.

Or to be paid at ſuch Feaſts, without more, it ſhall be paid yearly during the Term. 1 *Sid.* 116.

So, upon a Leaſe rendring Rent to be paid quarterly, it ſhall be paid every Quarter, tho' the Quarters do not end at the uſual Feaſts. 2 *Rol.* 450. *l.* 7.

(B. 9.) At what Time.

So, if a Demiſe be, rendring Rent at *Michaelmas*, or ſo many Days after, it ſhall be paid at the laſt Day, which is the legal Time of Payment. *R.* 10 *Co.* 127. *Vide Poſt*, (D. 7.)

So, if the Leſſor dies before the laſt Day, the Heir ſhall have the Rent. *R. Cro. El.* 575. 10 *Co.* 128. *b.*

If he grants the Reverſion to *B.* after *Michaelmas*, before the laſt Day *B.* ſhall have the Rent. 10 *Co.* 129. *a.*

So, if a Bond be to pay an Annuity to *B.* for his Life, at *Michaelmas* and *Lady-Day*, or in 30 Days after ſuch Feaſts, and *B.* dies after *Michaelmas*, and within 30 Days; the Annuity determines, and there ſhall be no Payment at *Michaelmas*. *R. Cro. El.* 380.

So, if a Leaſe be for 50 Years, if the Leſſor live ſo long, rendring Rent at *Michaelmas* or 30 Days after, and the Leſſor dies after *Michaelmas* within 30 Days; the Rent, for that Payment is diſcharged by the Act of God. *R.* 10 *Co.* 127. 2 *Cro.* 310.

If Rent be reſerved payable at ſuch a Day, and the Leſſor dies the ſame Day after Noon; it ſhall be paid to the Heir, or him in Remainder, not to the Executor; for it was not due till the laſt Moment of the Day. *R. Sal.* 578.

But, if the Tenant pays the ſame Day before the Death of the Leſſor to him in Remainder, the Executor ſhall be aided in Equity. *R. Eq. Ca.* * 21. * 2d Part of 2 *Mod. Ca.*

So, if the Leſſee pays to the Leſſor, or tenders his Rent at any Time of the Day, or at *Michaelmas* before the 30 Days after elapſe, the Leſſor ought to accept it. 10 *Co.* 127. *b.*

So, if Rent be reſerved yearly during the Term at *Michaelmas*, or 30 Days, and the Term ends at *Michaelmas*, it ſhall then be due before the 30 Days, otherwiſe it would not be paid yearly. *R.* 2 *Cro.* 227, 233, 310. *Yel.* 167. 1 *Bul.* 1.

So, if a Demiſe be of a Reverſion after a Term for Years, rendring Rent yearly *cum Reverſio acciderit*, the Rent does not begin till the Term expires. *Dy.* 377.

So, if the Reſervation be of an Heriot after the Death of the Leſſee, or of a Journey *Tempore Meſſis*, without limiting when the Reſervation commences; the Heriot ſhall not be paid, if the Leſſee dies before the former Term expires;

nor ſhall a Journey be performed till the Reverſion falls into Poſſeſſion. R. *per* 3 *J. Keeling cont.* 2 *Sand.* 166.

(C) The ſeveral Kinds of Rent.

(C. 1.) Rent-Service.

(C. 1.) What ſhall be.

THERE are three Kinds of Rent; Rent-Service, Rent-Charge, and Rent-Seck. *Lit. Sect.* 213.

Rent-Service is when a Tenant holds his Lands by Rent and Fealty, or any other Service. *Lit. Sect.* 122, 213.

Before the *St. Quia Emptores Terrarum* 18 *Ed.* 1. If a Man had made a Feoffment by Deed, or without Deed, rendring to him and his Heirs a certain Rent, this was Rent-Service. *Lit. Sect.* 216.

So, if he had reſerved no Rent or Service; for the Feoffee, of Courſe, had held of him by the ſame Services, by which he held of the Lord *Paramount*. *Ibid.*

But by that Statute it was provided *Quod Feoffatus teneat de Domino Capitali, &c.* and therefore now, not any Rent reſerved upon the Feoffment, but the Rent, which the Feoffee pays to the Lord *Paramount*, is the Rent-Service. *Lit. Sect.* 122, 140, 217.

So now, if a Man makes a Gift in Tail, leaſes for Life, for the Life of another, or for Years, rendring Rent, and reſerving the Reverſion to himſelf, this is a Rent-Service; for Fealty is a Service incident to the Reverſion. *Lit. Sect.* 214, 215.

So, if he makes a Gift in Tail, without Reſervation of any Rent; for the Donee ſhall hold of the Donor in like Manner as he holds over. *Co. L.* 143. *a.*

Otherwiſe, if he makes a Leaſe for Life, or Years, without a Reſervation. *Co. L.* 143. *a.*

So, if the Donor or Leſſor has the Reverſion, tho' he has not the immediate Revetſion: As, if he makes a Gift, or Leaſe, rendring Rent, Remainder to another in Tail, or for Life, the Reverſion to himſelf. *Co. L.* 142. *b.*

So, if the Donor, or Leſſor, grants his Reverſion to another, the Grantee has the Rent as a Rent-Service; for the Rent is incident to the Reverſion. *Lit. Sect.* 228.

(C. 2.) Quit-Rent, and Rent of Aſſiſe.

If the Rent reſerved by the Lord of his Tenant was reſerved for all Services, it is called a Quit-Rent; becauſe the Tenant, in reſpect of it, is quit from other Services.

And it may be reſerved from a Freeholder, or Copyholder. 2 *Inſt.* 19.

And being uſually paid in Silver, it was called *White Rent*, and the Rent paid in Pepper, Cummin, *&c. Black Rent. Ibid.*

And when the Rents of Freeholders and Copyholders are aſſiſed, or reduced to a Certainty, by the Lord of the Manor, they are called Rents of Aſſiſe. *Ibid.*

(C. 3.) Fee-Farm-Rent.

If upon a Feoffment the ſame Rent be reſerved, which was paid upon a Farm of the ſame Land, or the fourth Part of it, it ſhall be called a Fee-farm-Rent. 2 *Inſt.* 44. *Co. L.* 143. *b.*

If the King grants Land in Fee-Farm, without any Reſervation of Rent, the yearly Rent ſhall be paid. *Mo.* 168.

If he reſerves an expreſs Rent, it will be a Fee-Farm Rent. *Ibid.*

The Rent reſerved upon a Farm by the King was uſually paid in Proviſions for his Houſe, till the Time of *H.* 1. when it was changed to Money. *Mad.* 186.

So, if the King reſerves a Penſion, or one be granted to him out of Land, it will be extinguiſhed by Unity of Poſſeſſion, being in the Nature of a Rent. *Hard.* 388.

If Land be granted in Fee-Farm reſerving the whole Rent to a Stranger, it will be void. *Mo.* 168.

But Part may be to the King, and other Part to a Stranger. *Mo.* 168.

If a Fee-Farm Rent be reſerved to the King upon Condition of Re-Entry for Non-payment, and the King grants the Rent to *A.* in Fee; if the Rent afterwards be not paid purſuant to the Condition, the King ſhall not re-enter; for his Grant to *A.* would be defeated. *R. Cro. El.* 69.

All Lands granted in Fee-Farm are held in *Socage*, and not *in Chivalry*; for the whole Value is preſumed to be reſerved. *Mo.* 168. *Mad. Form. Int.* 8.

If a Rent of ſo much a Year be reſerved, but by the ſame Deed the Leſſor agrees to allow ſo much at every Payment for bringing the Rent: This ſhall not be recouped as a Diminution, or Alteration, of the Rent; but is a Covenant for Allowance. *R.* 2 *Cro.* 34.

(C. 4.) Incidents to Rent Service.

To Rent-Service Diſtreſs is incident; for, for every Rent-Service, a Man may diſtrain of common Right. *Co. L.* 142. *a. Vide Diſtreſs*, (A. 1. B. 1.)

So Rent-Service is incident to the Reverſion; for if the Reverſion be granted without ſaying *cum Pertinentiis*, the Grantee ſhall have the Rent alſo. *Co. L.* 143. *a.* 148. *a.*

(C. 5.) What ſhall not be Rent-Service.

But a Rent reſerved upon a Leaſe at Will is not a Rent-Service, tho' the Leſſor may diſtrain for it of common Right. *Co. L.* 142. *b.*

So, if a Tenancy comes to the King by Fine, *&c.* the Rent is not a Rent-Service, but is diſtrainable of common Right; for it is not the Act of the Lord, but of the Tenant only. *R.* 1 *And.* 160.

So, if Lands, Parcel of a Chantry, are held by Rent and Fealty, and upon Diſſolution, *&c.* the King grants them, the Patentee ſhall not hold of the firſt Lord, but of the King: Yet the Rent-Service (before due) continues payable as a Rent-Charge diſtrainable of Common Right. *R.* 1 *And.* 45. *Jon.* 235, 6.

(C. 6.) Rent-Charge.

(C. 6.) What ſhall be. By Reſervation.

A Rent-Charge is when Rent is granted out of Land, which is charged with Diſtreſs for the ſame Rent: As, if a Man ſince the *St. Quia Emptores Terrarum* 18 *Ed.* 1. makes a Feoffment by Deed, reſerving Rent to him and his Heirs, with a Clauſe of Diſtreſs. *Co. L.* 143. *b. Lit. Sect.* 217.

Or gives in Tail, or lets for Life, or Years, Remainder in Fee. *Lit. Sect.* 217.

Be it by any Deed, indented, or Poll; for the Feoffee by his Acceptance agrees to the Rent. *Co. L.* 143. *b.*

So, if a Man grants a Reverſion or Remainder of Lands in Fee, reſerving Rent with Diſtreſs. *Co. L.* 144. *a.*

Or conveys Lands by Bargain and Sale, or otherwiſe, by Way of Uſe. *Co. L.* 144. *a. Vide Ante*, (B. 3.)

(C. 7.) By Preſcription.

So a Man may have a Rent-Charge by Preſcription. *Co. L.* 144. *a.*

(C. 8.) By Grant.

So, if a Man grants out of ſuch Land a certain Rent with a Clauſe of Diſtreſs. *Lit. Sect.* 218.

Tho' he adds a Proviſo, that it ſhall not charge his Land; for that would be repugnant. *Co. L.* 146. *a.*

So, if a Man binds his Land to the Payment of Rent, it will be a Rent-Charge; tho' there be no expreſs Grant of Rent. *Co. L.* 147. *a.*

So, if a Man grants by Deed, that *A.* may diſtrain ſuch Land for a Rent, it will be a Rent-Charge; for the Land is charged with it by Way of Diſtreſs. *Lit. S.* 221.

Or ſays, that *A.* if he be not paid ſo much *per Ann.* ſhall diſtrain for it in the Manor of *D.* *Lit. Sect.* 221.

So, if he binds his Manor with a Rent to be diſtrained by the King's Bailiff; for the King's Bailiff is named but as a Servant to him; and he who can do it by a Servant, may do it by himſelf, or another. *Co. L.* 147. *a.*

So,

So, if he grants a Rent out of *B.* and by the ſame or another Deed grants that he may diſtrain for it in other Land; it is a Rent-Charge which iſſues ſolely out of *B.* tho' a Diſtreſs be in other Land. *Co. L.* 147. *a.*

So, if he binds his Land and Goods upon it to the Payment of a Rent, it will be a Rent-Charge, tho' he ſays Nothing of Diſtreſs. *Ibid.*

So, if he deviſes a Rent, with Power to diſtrain for it at the uſual Feaſts, it will be a Rent-Charge; tho' no expreſs Charge upon any Land. *R. Mo.* 592.

Otherwiſe if it was by Deed; for a Clauſe of Diſtreſs only is not ſufficient to create a Rent-Charge in a Grant. *Mo.* 592.

When the Grantee may elect to take it as a Rent-Charge, or as an Annuity. *Vide Annuity*, (C. 1, &c.)

If the Grant be *de qualibet Acra Terræ meæ* a Rent of 20*s.* where he has 20 Acres, the Grantee ſhall have 20*l. per Ann. Co. L.* 147. *b.*

If a Bargainor and Bargainee of Land join in a Grant of a Rent thereout, before Inrolment of the Bargain and Sale, it ſhall be the Grant of the Bargainor, and the Confirmation of the Bargainee till Inrolment, and afterwards the Grant of the Bargainee, and the Confirmation of the Bargainor. *Co. L.* 147. *b.*

If the Grant be out of a Freehold, and Term for Years, it iſſues wholly out of the Freehold only, tho' the Term is charged with Diſtreſs. *Co. L.* 147. *b.*

And, if he avows for a Diſtreſs upon the Term, he muſt plead the Grant of Rent out of the Freehold only. *R.* 7 *Co.* 24. *b.*

If the Grant be of a Rent out of a Term to *A.* for Life, he muſt plead the Grant during the Term, if *A.* lives ſo long; for he cannot ſay that he was ſeiſed of the Rent for Life. *Co. L.* 147. *b. R.* 7 *Co.* 25. *a.*

If the Grant be out of Land to *A.* of a Rent, which he had by the Grant of his Father, it will be a Grant of a new Rent; tho' he never had it by the Grant of his Father. 2 *Rol.* 423. *l. ult.*

So, if a Man recites a Grant to *A.* of ſuch a Rent for Life, and afterwards grants the ſame Rent after the Death of *A.* to another for Life, it will be a good Grant to the other, tho' there was not any Rent granted to *A.* 2 *Rol.* 424. *l.* 10.

So, if he lets for Life rendring 5*l. per Ann.* and afterwards grants the Rent to *B.* for his Life to take out of the ſame Land by the Hand of the Leſſee, or whatſoever Hand the Land ſhall come to; *B.* ſhall have the Rent for his Life, tho' the Leſſee dies before him. 2 *Rol.* 424. *l.* 5.

If a Grant be of a Rent-Charge payable at *Lady-day* and *Michaelmas* as afterwards expreſſed, and it is not expreſſed afterwards when it ſhall commence, the Rent commences immediately. *Semb. Jon.* 344.

So, if it be to commence as by Deed ſhall be afterwards expreſſed, and not otherwiſe, and he does not make a Deed afterwards; *Per* 2 *J. but per Crooke*, it ſhall be void. *Jon.* 344.

If it be to commence, as by Deed afterwards expreſſed, and not otherwiſe, and by a ſubſequent Deed he declares, that the Rent ſhall be paid, it ſhall commence at that Time. *R. Jon.* 344.

If after a Grant of a Rent-Charge the Grantor conveys his Land to the King, Remedy does not lie by Diſtreſs upon the King. *Sav.* 125.

But, if the King grants the Lands to *A.* the Diſtreſs is revived, and the Grantee may diſtrain for all the Arrears. *Semb. Sav.* 125.

(C. 9.) A Rent-Seck.

(C. 9.) What ſhall be.

A Rent-Seck is, when no Diſtreſs is incident to it: As, if a Rent be granted by Deed, out of Land, without a Clauſe of Diſtreſs. *Lit. Sect.* 218. 2 *Rol.* 423. *l.* 40.

Or, if a Man, ſince the *St. Quia Emptores*, makes a Feoffment by Deed, rendring Rent, without a Diſtreſs. *Lit. S.* 217.

Or gives in Tail, or for Life, Remainder in Fee, rendring Rent, without Mention of a Diſtreſs. *Lit. Sect.* 217.

So,

So, if the King grants Lands, Parcel of the Dutchy of *Lancaſter*, rendring Rent, it will be a Rent-Seck, or in Groſs; becauſe the Tenure is of the King, and the Rent is reſerved to him in Right of the Dutchy, which makes it a Rent in Groſs. *Mo.* 166.

So, if a Man binds his Goods and Lands in ſuch a Sum yearly, if ſuch a Condition be not performed; after a Breach, it will be a Rent-Seck iſſuing out of the Land, tho' there be no Words of Grant, or where it ſhall be taken. 2 *Rol.* 423. *l.* 42.

So, if a Rent be granted to *A.* in Fee, or for Life, with Power of Diſtreſs for ſo many Years, it ſhall be a Rent-Seck; for the Freehold is *Seck*, and the Diſtreſs is only appurtenant during the Years. *Co. L.* 147. *b.*

Or, if it be granted to two and their Heirs, with Power of Diſtreſs to one, it ſhall be a Rent-Seck for the Whole; for it is entire, and cannot be *Seck* to one, and a Rent-Charge to the other. *Co. L.* 147. *b.*

Yet, their Grantee, or the Survivor, ſhall have it as a Rent-Charge. *Ibid.*

So a Rent out of three Acres, with Diſtreſs in one, is a Rent-Seck. *Ibid.*

Or out of one Manor, with Diſtreſs in another. 2 *Rol.* 423. *l.* 35.

Or out of a Mill, *percipiend'* of him and his Heirs; for it ſhall be underſtood, that it ſhall be paid by him and his Heirs out of his Mill. 2 *Rol.* 423. *l.* 46.

So, if there be Tenant by Fealty and Rent, and a Grantee of the Rent, ſaving the Fealty to the Lord; the Grantee has the Rent as *Seck*. *Lit. Sect.* 225.

So, if the Lord grants the Fealty, ſaving to himſelf the Rent, he ſhall have the Rent as *Seck*. *Lit. Sect.* 226.

So, if a Rent-Service is reſerved, and afterwards the Land comes to the Lord by the *Stat.* of Diſſolution, or other Means, by which the Tenure is extinct, ſaving the Rent, it becomes a Rent-Seck. *R. Jon.* 234, 5.

So, where a Rent-Service is reſerved, and afterwards the Land is given to the King, or other Lord, by Act of Parliament, by which the Tenure is extinct, tho' there be no Saving for the Rent, yet it continues as a Rent-Seck. *Semb. Jon.* 235.

(D) Remedy for Rent.

(D. 1.) By Aſſiſe.

IF a Rent-Service, or Rent-Charge, be in Arrear, the Party has Remedy by Diſtreſs. *Vide Diſtreſs*, (A. 1, &c. B. 1, &c.)

So every one intitled to an Eſtate of Freehold, or Inheritance, in a Rent-Service, Rent-Charge, or Rent-Seck; if he be diſſeiſed of it, may maintain an Aſſiſe. *Vide Aſſiſe*, (B. 2, &c.)

What Seiſin is ſufficient for maintaining an Aſſiſe, or for making a Diſtreſs. *Vide Seiſin*, (C, D, E.)

(D. 2.) What ſhall be a Diſſeiſin of it.

If a Man obſtructs the Means, by which a Rent may be obtained, it will be a Diſſeiſin of the Rent. *Co. L.* 160. *b.*

As, it will be a Diſſeiſin of a Rent-Service, or Rent-Charge, if the Terre-tenant, or any other, reſiſt, and will not ſuffer a Diſtreſs, for Rent in Arrear, by him who has Right. *Co. L.* 160. *b.*

Or makes an Incloſure, by which he cannot come to diſtrain. *Lit. Sect.* 237, 238.

So, if he makes *Reſcous*, after a Diſtreſs taken. *Ibid.*

If a Stranger makes *Reſcous* in his Name. 1 *Rol.* 658. *l.* 35.

Or makes Replevin by Writ, or Plaint. *Lit. Sect.* 237, 238.

Or counterpleads the Title of the Plaintiff, for Delay. *Co. L.* 160. *b.* 161. *a.*

If he vouches a Record, and fails. *Co. L.* 160. *b.*

So, if he foreſtalls, or obſtructs the Lord, *&c.* when he is going to the Land to make a Diſtreſs, with Force, or Menace of Life or Member. *Lit. Sect.* 240.

So, it will be a Diſſeiſin of a Rent-Seck, or Rent-Charge, if the Terre-tenant makes Denial of Rent in Arrear, upon lawful Demand upon the Land. *Lit. Sect.* 233, 238, 239.

Tho' the Terre-tenant be abſent from the Land at the Time of the Demand; for that is a Denial in Law. *Co. L.* 153. *b.*

So, tho' the Demand be but of one Terre-tenant, it will be a Denial by all. 1 *Rol.* 658. *l.* 27.

If by Word of Mouth he directs the Tenant not to pay. *Ray.* 371.

If he does not pay upon Diſtreſs; for that is a Denial in Law. 1 *Rol.* 658. *l.* 15, 20.

So Incloſure or Foreſtallment, *&c.* from coming to the Land to make a Demand, will be a Diſſeiſin of a Rent-Seck. *Co. L.* 161. *b.*

So, if the Tenant pays his Rent to another Lord by Coercion of Diſtreſs, it will be a Diſſeiſin, if the Lord pleaſes. *Co. L.* 323.

But Payment of Rent to another, by Coercion, will not be a Diſſeiſin, but at the Election of the Lord. *Co. L.* 323.

So Denial of Rent by him, who is not Terre-tenant, will not be a Diſſeiſin. *R. Jon.* 414.

Or, if the Refuſal does not appear to be upon Demand upon the Land. *Per* 3 *J. Cro. cont.* for, there being a Refuſal, a Demand ſhall be intended. *Jon.* 414.

So a *Reſcous*, Replevin, Incloſure, Denial, *&c.* will not be a Diſſeiſin before actual Seiſin of the Rent. *Co. L.* 161. *a.* *Vide Seiſin*, (F. 1, &c.)

When a Rent ſhall be apportioned, ſuſpended, or extinguiſhed, *Vide Suſpenſion.*

(D 3.) Debt, Diſtreſs, or Re-entry.

When there ſhall be Remedy for it by Debt, or Diſtreſs, *Vide Dett*, (A. 5, 7.) —*Diſtreſs*, (A. 1, &c.)

If an Eſtate be upon Condition that he pay the Rent, how Remedy ſhall be by Re-Entry for the Condition broken, *Vide Condition*, (O. 3, &c.)

[Tenant by Parol Demiſe from Year to Year, is within 11 *G.* 2. *c.* 19. and ſubject to pay double Rent, if he does not quit after having given Notice. *Timmins* v. *Rowliſon*, *H.* 5 *G.* 3. 3 *B. M.* 1603.]

[If Tenant gives Parol Notice that he will quit, it is ſufficient, and ſubjects him to double Rent if he does not. *Ibid.*]

(D. 3) Demand, when neceſſary.

But in all Caſes of a Subject, where an Eſtate is upon Condition to be void for Non-payment of Rent, the Condition will not be broken, if the Rent be not demanded. *Co. L.* 201. *b.* *R.* 2 *Cro.* 145.

Tho' it appears that the Party was not ready to pay, if a Demand had been made. 1 *Rol.* 458. *l.* 17, 22.

Tho' the Condition be upon a Leaſe for Years. *R. Hob.* 331. *R. Jon.* 9.

Or upon a Leaſe of Tithes, or other incorporeal Inheritance. *R. Mo.* 408.

So, if there be a Leaſe, and a *Nomine Pœnæ* for Non-payment of the Rent, the Rent muſt be demanded, before he is intitled to the *Nomine Pœnæ*. 1 *Rol.* 459. *l.* 25. *D.* 7 *Co.* 28. *b.* *R. Hob.* 82, 133. *Pal.* 208.

So, if there be a Covenant, or Bond for Payment of a Sum in Groſs, if the Rent be not paid. *Per* 2 *J.* 1 *cont.* 1 *Rol.* 460. *l.* 5.

So, upon a Bond to perform all Covenants, Payments, *&c.* in ſuch an Indenture, he cannot aſſign a Breach for Non-payment of Rent, reſerved by the Indenture, if he does not ſhew a Demand of the Rent, except where the Defendant pleads Performance. *R.* 1 *Rol.* 460. *l.* 20. *Adm. Cro. El.* 829. *Cro. Car.* 77.

So

So, tho' the Bond be expreſsly to pay the Rent, according to the Tenor of the Indenture. *R.* 1 *Rol.* 460. *l.* 50.

Or, to pay the Rent, if it be demanded. *R.* 1 *Rol.* 460. *l.* 45.

So, if the King makes a Leaſe, upon Condition to be void for Non-payment of Rent, and afterwards grants the Reverſion, the Patentee ſhall not avoid the Leaſe, without a Demand of the Rent. *R.* 4 *Co.* 73. *a.* *Mo.* 205. 5 *Co.* 56. *a.*

So the King himſelf cannot avoid it without a Demand, if the Condition be expreſs for Non-payment upon Demand. *Dub. Mo.* 210.

(D. 4.) When not.

But, if the King makes a Leaſe, upon Condition to be void for Non-payment of Rent, generally, a Demand is not neceſſary. *R.* 4 *Co.* 73. *a.* *Mo.* 205. 5 *Co.* 56. *a.* 1 *Leo.* 12.

So, it is not neceſſary in the Caſe of a Subject, if the Condition be expreſs, that it ſhall be void for Non-payment without Demand. 1 *Rol.* 459. *l.* 32. *D.* 5 *Co.* 40. *b.* *Dal.* 4.

So Debt lies for Rent without a Demand. *R.* 2 *Rol.* 427. *l.* 30.

Or, Diſtreſs; for the Diſtreſs itſelf is a ſufficient Demand. *R. Mo.* 883.

So, Covenant, where the Covenant is expreſs to pay ſuch Rent. *R.* 1 *Rol.* 459. *l.* 45, 52.

And Debt upon a Bond to pay ſuch a Rent. *R. Hob.* 8.

So, in Debt upon a Bond to perform Covenants in an Indenture, if the Defendant pleads Performance, the Plaintiff may aſſign a Breach for Non-payment of the Rent, without ſhewing a Demand; for, if the Defendant rejoins, that it was not demanded, it will be a Departure. *R. Cro. El.* 829. 1 *Rol.* 460. *l.* 30. *R. Cro. Car.* 76. *Hut.* 90. *R. Hob.* 8.

So, if a Leaſe be, that upon Non-payment of the Rent at ſuch a Feaſt, there ſhall be a *Nomine Pœnæ* of 40*s.* for every Day that the Rent ſhall be in Arrear; one Demand is ſufficient to intitle to the *Nomine Pœnæ* for every Day. *R. Pal.* 208.

(D. 5.) How it ſhall be made.

The Demand muſt be of the preciſe Rent due; for, if he demands a Penny more or leſs, it will be ill. *R.* 1 *Leo.* 305.

So he ought to expreſs when it was due. *R. Cro. El.* 209. 1 *Leo.* 305.

Tho' the Jury finds that nothing more is due than was demanded, it does not help, if the Demand did not expreſs at what Time due. *R. Cro. El.* 209.

So, if the Rent be 7*l. per Ann.* and 3*l.* more was in Arrear, if he demands 10*l.* in an intire Sum, it is ill. *Per Rol. Al.* 94.

But a Demand by Attorney is good.

Tho' he does not ſhew his Name, or Authority. *D.* 3 *Leo.* 224.

(D. 6.) At what Place.

So the Demand muſt be made at the Place where the Rent is payable, if any Place is appointed by the Parties, tho' it be not upon the Land. *Co. L.* 202. *a.*

If it be payable at one Place or another, it ought to be demanded at both. *Per* 2 *J.* 2 *Rol.* 428. *l.* 36.

If payable at or in the Church of *B.* it ought to be within and without the Church. 2 *Rol.* 428. *l.* 40.

If payable to the Biſhop at *Exeter*, it ought to be at his Palace there. *R.* 1 *And.* 27. 3 *Leo.* 4.

If no Place of Payment is expreſſed, the Demand muſt be upon the Land. *Co. L.* 201. *b.* *R. Yelv.* 37.

And at the moſt notorious Place upon the Land: As, if there be a Houſe there, it muſt be at the Fore-Door of the Houſe. *Co. L.* 201. *b.*

If it be iſſuing out of a Wood, it ought to be at the Gate, or moſt common Way through the Wood. *Co. L.* 202. *a.*

If there be ſeveral Places equally notorious, he, who demands, has Election, at which he will make the Demand. *Ibid.*

If Rent be reſerved by the King at the *Exchequer*, his Patentee muſt demand it upon the Land. *Co. L.* 201. *b.* *Sav.* 131.

But,

But, if the King does not expreſs a Place of Payment, it ought to be paid to him at the *Exchequer*, without other Demand. *Co. L.* 201. *b.*

If the Demand be at the moſt notorious Place, it is ſufficient, tho' there be no One preſent. *Ibid.*

Tho' a Perſon be in the Houſe, it is not neceſſary to go in. *Ibid.*

Tho' he be ready to pay, at another Part of the Houſe, Land, *&c.* *Co. L.* 202. *a.*

So a Demand at a Place, not the moſt notorious, will be no Demand, if it be traverſed. *Ibid.*

As, if a Demand be at a Wood, where Land was alſo demiſed. *Popb.* 58.

If in a Pit, or among Buſhes, or in a common Way upon the Land. *Popb.* 58.

If at a Barn, when the Leſſee is in another Barn demiſed. *Ibid.*

Yet, if the Party tenders his Rent to the Leſſor, *&c.* it will be well, tho' it was not in the moſt Notorious Place. *Co. L.* 202. *a.* *R.* 5 *Co.* 114.

(D. 7.) At what Time.

So the Demand muſt be continued by a Space ſufficient for Receipt of the Money before the Setting of the Sun upon the laſt Day appointed for Payment. *Co. L.* 202. *a.*

If Iſſue be, whether he continued half an Hour before the Setting, and it is found that he continued only a Quarter, it is ſufficient, if that Space was ſufficient for counting the Money; for this only is material. *R. Cro. El.* 209. 1 *Leo.* 305. *Lut.* 1139.

If Payment be at *Michaelmas*, or twenty Days after, the Demand ought to be upon the laſt of the twenty Days; for a Demand at the Feaſt is not ſufficient. *Co. L.* 202. *a.* *R. Pl. Com.* 172. *b.* *Semb. Dy.* 142. *a.* *R.* 10 *Co.* 127. 129. *a.* 1 *Leo.* 142. *Lut.* 1139.

If a Reſervation be of 20 *l. per Ann.* when demanded, the Demand muſt be upon the laſt Day of the Year. *Popb.* 37.

If a Reſervation be, at ſuch a Day between 4 and 6 *poſt Meridiem*, a Demand at 5 till 6 is ſufficient, tho' he was not there at 4 o'Clock. *Cro. El.* 15.

But a Demand for Diſtreſs may be at any Time, where it is ſaid, that if it be not paid upon Demand, he may diſtrain. *Co. L.* 202. *a.* 144. *a.*

So, where Payment is at *Michaelmas*, or twenty Days after, a Tender at *Michaelmas* prevents a Breach of the Condition. *R.* 10 *Co.* 129. *a.*

Or at any Time within the twenty Days. 2 *Leo.* 130.

Tho' he pays to a Servant, who tenders the Money to the Leſſor before the Days elapſed. *R.* 2 *Leo.* 131. *Cro. El.* 48.

So, if a Reſervation be at *Michaelmas*, or ſo many Days after, and a Covenant to pay at *Michaelmas*; Covenant lies, if it be not paid at the Feaſt. *R.* 1 *Rol.* 431. *l.* 35.

Or, if the Reſervation be at *Michaelmas*, and if it be not paid at *Michaelmas*, or within forty Days after, that the Leſſor ſhall re-enter; the Leſſor may have Debt, or diſtrain for the Rent, tho' the forty Days be not expired. 2 *Leo.* 131.

(D. 8.) By Payment of the Sheriff upon an Execution.

By the *St.* 8 *An.* 14. No Goods, on any Meſſuage or Lands, *&c.* leaſed for Life, Years, at Will, or otherwiſe, ſhall be taken by Virtue of any Execution, unleſs the Party, at whoſe Suit Execution is ſued, before Removal of the Goods by ſuch Execution or Extent, pay to the Landlord the Arrears of Rent, not exceeding a Year's Rent, due at the Time of the Execution.

And the Sheriff is impowered to levy the Money paid for Rent, and the Execution Money.

And if the Sheriff, upon Demand of the Rent, removes the Goods taken in Execution, before Payment of the Rent, an Action lies againſt him.

So, upon Motion, the Court will direct the Sheriff to pay the Rent before the Execution is compleated.

[On an Execution for Coſts on Judgment of Nonſuit, Sheriff cannot, after he has received Notice of Rent due, remove the Goods before he has ſatisfied Land-

Landlord one Year's Rent; unleſs Rent paid, Sheriff muſt quit; if he does not, Action lies againſt him; or, on Motion, the Court will order Reſtitution to the Amount of the Goods ſold, deducting Coſts incurred before Notice. *Henchett* v *Kempſon*, *P.* 2. G. 3. 2 *Wilſ.* 140.]

[A Bill of Sale is a Removal of Goods taken by *Fieri facias*, and the Sheriff ſhall pay the Year's Rent out of the Money levied. *Barnes* 211.]

[On an Outlawry, *cap. utlagat.* and Goods ſeized by Proceſs ſtill remaining in the Sheriff's Hands, Landlord ſhall have a Year's Rent. *Greaves* v. *D' Acaſtro*, *P.* 1725. *Bunb.* 194.]

[The Landlord is to have his Year's Rent without any Deduction. *Gore* v. *Goſton*, *M.* 12 *G. Str.* 643.]

[An Executor has the ſame Benefit of the Act as the Landlord, for it is an Intereſt veſted. *Chace* v. *Chace*, *H.* 2 *G.* 2. *Fort.* 359.]

But by a Proviſo in the *St.* 8 *An.* 14. It ſhall not hinder the Queen in the levying or ſeiſing any Debts, Fines, Penalties, or Forfeitures anſwerable to her Majeſty: But the Queen may levy, *&c.* them in ſuch Manner as if the Act had not been made.

[An Extent againſt the King's Debtor teſted after the Diſtreſs, takes place of the Diſtreſs actually made, before Sale, but not after. *Rex* v. *Cotton*, *T.* 24 & 25 *G.* 2. *Parker* 112.]

[If Goods are ſeized on an Extent on an Outlawry, the Landlord ſhall not have the Goods delivered to him, though he diſtrained before the Extent. *Rex* v. *Southerly*, *P.* 1716. *in Sc. Bunb.* 5.]

[If Extent iſſues againſt a Tenant, and afterwards, but before the Extent is executed, the Landlord diſtrains, and the Inquiſition finds the Goods diſtrained to be in the Poſſeſſion of the Tenant, the Landlord ſhall not have the Benefit of the *Stat.* 8 *Ann. Rex* v. *Pritchard*, *T.* 1729. *Bunb.* 269.]

[When there are two Executions, the Landlord ſhall not have a Year's Rent on each. *Dod* v. *Saxby*, *M.* 9 *G.* 2. *Str.* 1024.]

[The Ground-Landlord of a Houſe is not intitled to a Year's Rent on an Execution againſt an Under-leſſee. *Bennet's Caſe*, *M.* 1 *G.* 2. *Str.* 787.]

[*A.* lets Land to *B.* at 75 *l. per Annum* for one Year; a few Days before the End, *B.* ſays he can hold it no longer, but deſires as much as will feed ſixteen Cows, which *A.* complies with, and demiſes alſo the Houſe and Garden; ſome Months after, *B.*'s Goods are taken in Execution, no Part of the Rent of 75 *l.* being paid; *A.* ſhall not have the 75 *l.* on Motion, and *Semb.* no Rent under the Act, though he proceed by Action. *Cook* v. *Cook*, *P.* 11 *G. Andr.* 217.]

[If the Money be levied by Sale of Goods taken in Execution againſt Defendant, who was a Tenant owing Rent, after the Landlord's Death inteſtate, and before Adminiſtration granted, the Court will not order the Sheriff to pay the Year's Rent to the Adminiſtrator afterwards. *Waring* v. *Dewberry*, *T.* 4 *G. Str.* 97.]

[A Landlord is obliged to demand the Arrears before the Removal of the Goods, or it is too late. *Waring* v. *Dewberry*, *T.* 4 *G. Str.* 97. *Fort.* 360. *Darling* v. *Hill*, *P.* 9 *G.* 2. *B. R. H.* 255.]

Vide more concerning *Rent* in *Chancery*, (4 N. 1, &c.)—*Copyhold*, (K. 10, 11.)—*Dett*, (A. 5, 7.)—*Forceable Entry*, (D. 9.)—*Parceners*, (C. 8.)—*Pleader*, (2 K. 15, 19.—3 M. 25.)

Avowry for Rent.

Vide Temps, (G. 14.)

Rent of Aſſiſe.

Vide Rent, (C. 2.)

Rent-Charge.

Vide Diſtreſs, (B. 2.)—*Pleader*, (3 K. 18.)—*Rent*, (C. 6.)

Fee-Farm Rent.

Vide Rent, (C. 3.)

Quit-Rent.

Vide Rent, (C. 2.)

Rent-Seck.

Vide Rent, (C. 9.)

Rent-Service.

Vide Diſtreſs, (B. 1.)—*Rent*, (C. 1, &c.)

REPAIRS.

Vide Eſgliſe, (G. 2.)—*Pleader*, (3 O. 11.)

Reparavit.

Vide Pleader, (3 O. 15.)

Reparare non potuit.

Vide Pleader, (3 O. 17.)

REPEAL.

Vide Patent, (F. 1, &c.)

—— of a Statute.

Vide Parliament, (R. 9.)

REPLEADER.

Vide Pleader, (R. 18.)

REPLEVIN.

(A) For what Things it lies.

A Replevin lies, when Cattle, or Goods, are diſtrained and impounded, and thereby the Sheriff is commanded upon Pledges to deliver them to the Owner. *Co. L.* 145. *b.*

And Replevin may be made by Writ, or by Plaint: By Writ, at the Common Law; by Plaint, upon the *St. Marlb. Co. L.* 145. *b. Vide Pleader*, (3 K. 1, &c.)

Replevin lies of all Goods and Chattels unlawfully taken.

Whether they be live Cattle, or dead Chattels. *F. N. B.* 68. *D.*

Replevin lies *pro Examine Apium. Ibid.*

For Iron of his Mill. *Ibid.*

So, if Cattle, after the Taking, return to the Owner, he may have Replevin for the wrongful Taking. *F. N. B.* 69. *H.*

So, if Cattle are taken *Damage feasant*, and detained after sufficient Amends, he may have Replevin for the wrongful Detainer. *F. N. B.* 69. *G.*

So, if a Cow, *&c.* distrained, has a Calf, *&c.* Replevin lies of the Calf, *&c. F. N. B.* 69. *D. Dal.* 65.

So, if the *Mesne* puts his Cattle in the Place of the Cattle of the Tenant *peravail*, as he may, he may have Replevin for them; tho' they never were distrained. *Co. L.* 145. *b.* 7 *H.* 4. 18. *a.*

So Replevin lies; tho' there be an express Grant that the Party may distrain and hold the Goods against Pledges till the Rent be paid; for Goods cannot by Grant be made irrepleviſable. *Co. L.* 145. *b.*

(B) By whom it lies.

HE, who brings a Replevin, ought to have the Property of the Cattle, or Goods, in him. *Co. L.* 145. *b.*

But a special Property is sufficient. *Ibid.*

As, if Goods be in his Custody as a Pledge, or for the Manuring of his Land. *Ibid.*

So a Lord may have a Replevin for the Goods of his *Villein*; for his Action of Replevin amounts to a Claim, and vests the Property in him. *Co. L.* 145. *b. F. N. B.* 69. *F.*

A Husband, for the Goods of his Wife, taken *dum Sola. F. N. B.* 69. *K.*

An Executor, or Administrator, for the Goods of his Testator. 1 *Sid.* 81.

But, if Goods are taken out of the Custody of a *Villein*, by a Trespasser, the Lord cannot have Replevin; for the *Villein* had but a Right to the Goods. *Co. L.* 145. *b.*

(C) Against whom.

REPLEVIN lies against him who takes the Goods.

And also against him, who commands the Taking; as well as Trespass. *R.* 2 *Rol.* 431. *l.* 5.

Or against both together. *Ibid.*

So, it lies against him who takes *Damage feasant*, if he detains after Amends tendred. *F. N. B.* 69. *G.*

But, if there be a Dispute upon the Seisure of Cattle in a Highway, upon which Application is made to *A.* a Stranger, who permits *B.* (upon Security given to him to return the Cattle to him, who has Right) to depasture the Cattle in the mean Time till the Contest is determined, and thereupon the Servants of *A.* seise the Cattle for the Use of their Master; Replevin does not lie against *A.* but he may plead *Non cepit. R.* 1 *Leo.* 42.

So, if he stays the Cattle, passing thro' his Manor, till the Contest determined. *Godb.* 113.

So Replevin does not lie against him, who takes Goods beyond Sea, tho' he afterwards imports the Goods hither. *Per Pol. Sho.* 91.

(D) When

(D) When a Replevin does not lie.

BUT a Replevin does not lie for Goods taken in Execution.

Nor for Goods ſeiſed for a Debt to the King, without Command of the King, or of the Barons of the *Exchequer*. *Mad.* 672. *Et quia Averia capta pro Debitis noſtris non ſunt Replegiabilia niſi per Præceptum noſtrum vel Baron', noſtr' in ſcaccario noſtro, Ideo Averia capta de Hominibus Epis' Lond' in Wydernam' deliberari facias, &c.*

But a Replevin lies againſt the King, if Goods be in his Hands. *Per Hide*, to the Lords. 3 *Ruſh.* 1361.

So a Replevin does not lie for Goods ſeiſed by Warrant of a Juſtice of Peace, upon a Conviction for Deſtruction of the Game, *&c.* *Semb.* 2 *Mod. Ca.* 208, 9.

[Not for Goods diſtrained on a Conviction (for Deer-ſtealing). *Rex* v. *Monkhouſe*, *P.* 16 *G.* 2. *Str.* 1184.]

[And if the Under-ſheriff grants it, an Attachment ſhall go againſt him. *Ibid.*]

[Nor for Goods diſtrained for a Fine impoſed on an Officer by Commiſſioners of Land-tax; and if he takes out Replevin, it is a Contempt, and an Attachment will be granted. *Rex* v. *Oliver*, *T.* 1717. *Bunb.* 14.]

So a Replevin by Writ ought not to be made before Pledges found to the Sheriff. *Vid. Pleader*, (3 K. 5.)

[On a *Scire facias* againſt a Sheriff for not taking Pledges, he muſt plead *ad idem*. *Hayn* v. *Bigg*, *Fort.* 331.]

So the Sheriff uſually takes a Bond. *

* The Sheriff is to take Bond with two Securities in double the Value, by *St.* 11 *G.* 2. 19.

And, if upon ſuch Bond the Party in Replevin does not enter his Plaint in the County Court, the Bond will be forfeited.

So if, afterwards he does not proceed in the Proſecution.

Or, if he be Nonſuit, or has a Verdict againſt him. *Carth.* 519.

But if the Plaintiff in Replevin enters his Plaint, and afterwards is reſtrained by an Injunction out of *Chancery* till his Death, whereby his Plaint abates, the Bond will not be forfeited. *R. Carth.* 519.

[In Debt on a Replevin-bond, is a bad Plea, that Defendant appeared at the County-Court; he muſt follow it, wherever removed, to the End of the Cauſe. *Anon.* *Fort.* 209. *Nicols* v. *Newman*, *P.* 3 *G.* 2. *Fort.* 361.]

[In Debt on Replevin-bond, that he had performed all Conditions is a bad Plea; he ſhould plead, he did indemnify. *Lutwydg.* v. *Jameſon*, *M.* 4 *G.* 2. *C. B.* *Fort.* 210.]

[If Debt is brought on a Replevin-bond for not proſecuting in County-court with Effect, and Defendant pleads he did then and there proſecute with Effect, and Plaintiff replies, he (preſent Defendant) removed it by *Recordari* into *C. B.* and was there nonſuited, the Replication is well. *Vaughan* v. *Norris*, *T.* 8 *G.* 2. *B. R. H.* 137.]

Vide more concerning *Replevin* in *County*, (C. 7.)—*Pleader*, (3 K. 1, &c.)—*Viſcount*, (B. 3.)

Homine Replegiando.

Vide Impriſonment, (L. 4.)

REPLICATION.

Vide Action upon the Caſe upon Aſſumpſit, (H. 7.)—*Arbitrament*, (I. 5, 6.)—*Aſſiſe*, (B. 16, &c.)—*Chancery*, (N.)—*Information*, (D. 6.)—*Parliament*, (L. 24.)—*Pleader*, (C. 40.—E. 37.—F. 1, &c.—M. 3—2 E. 4.—2 L. 4.—2 W. 19, 20, 22, 23, 25.—3 Y. 6, 8, 9, 10. 11, 13, 14.—3 I. 10.—3 K. 24, 25.)—*Prærogative*, (D. 75.)

Double Replication.

Vide Pleader, (F. 16.)

REPORT.

Maſter's Report.

Vide Chancery, (W. 2, 3.)

REPRISALS.

Vide Prærogative, (B. 4.)

REPUGNANCY.

Vide Abatement, (H. 6.)—*Condition*, (D. 4, &c.)—*Fait*, (E. 10.)—*Pleader*, (S. 23.)

REQUEST.

Vide Condition, (L. 10, 11.)—*Pleader*, (C. 69, &c.)

RESCOUS.

(A) When it lies.

WHEN *Reſcous* lies, or not, upon a Diſtreſs, *Vide Diſtreſs*, (D. 3, &c.)

Reſcous lies not only upon a Reſcous of a Diſtreſs for Rent Service, *Damage feaſant*, Debt, or Tax due to the King (of which *Vide in Diſtreſs*, D. 5.) but alſo when a Perſon arreſted by Proceſs out of a Court of the King, or other Lord, is reſcued. *F. N. B.* 101, 102. *Reg.* 117, 118.

So, if a Perſon be reſcued, who is taken upon Hue and Cry, or other Contempt. *F. N. B.* 102. *Reg.* 117, 118.

Reſcous is, when a Man lawfully arreſted, or taken, is ſet at large wrongfully. *Co. L.* 160. *b.*

And lies, tho' the Proceſs be erroneous: As, if a *Capias* goes before an Original. *R. Dal.* 1.

So, it will be a *Reſcous*, if a Stranger, of his own Head, takes Goods diſtrained by another; tho' the Diſtreſs was wrongful. 1 *Rol.* 673. *l.* 45.

If *A.* reſcues his own Goods, for which there was no Cauſe of Diſtreſs and alſo the Goods of a Stranger, for which it does not appear whether there was Cauſe of Diſtreſs, or not. *R.* 2 *Cro.* 568.

(B) When not.

BUT it cannot be a *Reſcous*, where the Man ſet at large never was in Cuſtody; for, if the Sheriff, *&c.* be hindred from making an Arreſt, an Action upon the Caſe lies, but not *Reſcous*. *F. N. B.* 102. *F.*

So an Action does not lie for a Reſcue, where there was no Cauſe of Taking: as, if the *Reſcous* be of a Diſtreſs made for Rent, where no Rent was due. *Co. L.* 160. *b.* *Vide Diſtreſs*, (D. 5. 9.)

Or, if the Rent was tendred before the Diſtreſs made. *Co. L.* 160. *b.*

Or the Diſtreſs was made in the Highway. *Co. L.* 160. *b.*

Or of Goods not diſtrainable by Law. *Co. L.* 161. *a.*

So, if a Man takes the Goods of *B.* and *C.* for a Diſtreſs, together, where there was no Cauſe for a Diſtreſs; an Action does not lie tho' *B.* reſcues the Whole. 1 *Rol.* 673. *l.* 47.

Or the Goods of his Tenant and a Stranger for a Diſtreſs for Rent, where no Rent is due; an Action does not lie, tho' the Stranger reſcues the Goods of both. *Q. F. N. B.* 102. *E.*

(C) By whom it lies.

IF a Reſcue be made of a Diſtreſs made by a Bailiff, or Servant of another, the Maſter ſhall have *Reſcous*; and not the Servant. *F. N. B.* 101. *F.*

So, if a Man taken in Execution be reſcued, the Plaintiff ſhall have an Action, and not the Bailiff who arreſted him. *Q. F. N. B.* 102. *C. Reg.* 118. *a. b. R. per* 3 *J.* 2 *cont. Hutt.* 98. *Cro. Car.* 109.

So the Lord of a Franchiſe, or Liberty, ſhall have an Action for a *Reſcous* done to his Bailiff. *F. N. B.* 101. *H.* 102. *B.*

But, if the King's Bailiff, or Collector, arreſts, or diſtrains for a Duty to the King, he ſhall have an Action *qui tam*; for the King cannot have it. *F. N. B.* 101. *G. H.* 102. *A. B. G.*

So, if a Bailiff of a Sheriff diſtrains for the Wages of a Knight for Parliament, and *Reſcous* is made, he ſhall have an Action, for the Knight cannot have it; becauſe it is not a Duty from any certain Perſon. *F. N. B.* 102. *D.*

So a Bailiff of a Franchiſe.

(D.) Remedy for a Reſcous.

(D. 1.) By Writ of *Reſcous*.

IF a Man reſcues Goods diſtrained, or a Perſon arreſted by another, he may have a Writ of *Reſcous, Quare cum Ipſe Bona, &c. diſtrixiſſet, & eadem imparcare voluiſſet, D. Vi & Armis reſcuſſit. F. N. B.* 101.

And he may join an Aſſault upon his Servant in the ſame Writ. *F. N. B.* 102. *D.*

[Writ of *Reſcous* may contain alſo a Continuance againſt the Defendant. *Barnes* 429.]

(D. 2.) By Action upon the Caſe

So, if a Perſon arreſted upon *Meſne* Proceſs be reſcued, an Action upon the Caſe lies againſt the Reſcuers, by the Plaintiff in the Suit; for he has the Loſs, and no Remedy againſt the Sheriff. *R.* 2 *Cro.* 485, 6. 3 *Bul.* 200.

So, it lies by the Plaintiff againſt the Reſcuers, if the Reſcue be after an Arreſt upon a judicial Proceſs; for it is reaſonable that the Plaintiff ſhould have his Election to ſue the Reſcuers, or the Sheriff; for perhaps the Sheriff is dead, or inſolvent. *R. per* 3 *J.* 2 *cont. Cro. Car.* 109. *Hut.* 98.

And he may declare according to the Truth of his Caſe: As, that the Reſcue was from the Sheriff's Deputy. *R.* 2 *Cro.* 242.

So, by the *St.* 2 *W. & M. ſſ.* 1 *ch.* 5. *ſect.* 4. Upon Pound-Breach, or *Reſcous* of Goods diſtrained for Rent, the Perſon grieved may, by Action on the Caſe, recover treble Damages and Coſts againſt the Offenders, or any of them, or the Owner of the Goods, if found to have come to his Uſe, or Poſſeſſion. *Vide Diſtreſs*, (D. 4)—*Pleader*, (2 S. 29.)

But,

But, if the Defendant be reſcued upon *Meſne* Proceſs, and the Sheriff returns the *Reſcous*, an Action upon the Caſe does not lie againſt the Sheriff. *R.* 3 *Bul.* 200. 2 *Cro.* 419, 486. *Vide Eſcape*, (D.)

(D. 3.) By Indictment.

So, if a *Reſcous* be made upon a Diſtreſs, *&c.* for the King, an Indictment lies againſt the Reſcuer. *F. N. B.* 102. *G.*

An Indictment for a *Reſcous* will be good, tho' it does not ſay *Vi & Armis*; for *Reſcuſſit* imports it. *R.* 2 *Bul.* 208. 2 *Cro.* 345, 473.

Tho' it does not ſay in what Place the *Reſcous* was, for it ſhall be intended, where the Arreſt was made. *R.* 2 *Bul.* 208. 2 *Cro.* 345.

If it ſays, that, by Virtue of a Plaint before the Sheriff, he was lawfully arreſted, it is ſufficient, without ſaying, that is was by Warrant; for a good Warrant ſhall be intended, if he was lawfully arreſted. *R.* 2 *Cro.* 473.

[In an Indictment for a Reſcue from the Houſe of Correction, it muſt appear for what the Priſoner was committed there. *Rex* v. *Freeman*, *P.* 18 *G.* 2. *Str.* 1226.]

(D. 4.) By Return of *Reſcous*.

So, if a *Reſcous* be made upon *Meſne* Proceſs, the Sheriff may return, that the Defendant was arreſted, and *ſeipſum reſcuſſit & non eſt inventus, &c.* *Kit.* 260. *b.* *R.* 2 *Cro.* 419. *Dub.* 1 *Jon.* 201.

Or, *Quod ipſe et alii, &c. recuſſerunt.* *Kit.* 261. *a.*

So the Sheriff may return *Mandavi Ballivo*, who returned a *Reſcous*. *R.* 2 *Rol.* 457. *l.* 7, 10.

And in *B. R. Mandavi Ballivo itineranti*, who anſwered that he was reſcued. *R.* 2 *Rol.* 457. *l.* 5.

But it is not good in *C. B.* for a *Reſcous* from the Bailiff is a *Reſcous* from the Sheriff, and ought to be returned as ſuch. 2 *Rol.* 456. *l.* 50. *R. Dy.* 241. *a.*

So, upon a *Fieri facias*, a *Reſcous* cannot be returned. *R. Sho.* 180.

(D. 5.) How it ſhall be returned.

The Return of a *Reſcous* ought to be certain: and therefore, if it does not ſhew that he was in his Cuſtody, it will be inſufficient.

So, if it does not ſhew where he was arreſted; for perhaps it was out of the County. *R. Yel.* 51. *Mo.* 422.

If it ſays, that a Bailiff arreſted, and he was in Cuſtody of the Sheriff, and reſcued out of the Cuſtody of his Bailiff, it is repugnant. *R. Sal.* 586.

If it ſays, his Father reſcued *A.* ſuch a Day, and *A.* reſcued himſelf, without ſaying at what Time, it is bad. *R.* 2 *Bul.* 137.

If he makes the Return of a Bailiff of a Franchiſe, he ought to ſhew that he had *Retorn' Brevium*. *Cro. El.* 781.

And that the *Reſcous* was from ſuch Bailiff.

So, he ought to ſhew the Time and Place of the *Reſcous*. *R. Pal.* 563.

And that the Perſon, to whom the Sheriff directed his Warrant, was his Bailiff. *R. Sti.* 155.

And for what Cauſe the Warrant was directed to him. *R. Sti.* 155.

But it is ſufficient to ſay, that he made a Warrant to arreſt, without ſaying *ſub Sigillo*, for the Word *Warrant* imports it. *R.* 2 *Jon.* 197.

So, it is ſufficient to ſay that he was reſcued out of the Cuſtody of a Bailiff *Virtute Warranti ſibi Facti*; for this is out of the Cuſtody of the Sheriff *R.* 2 *Jon.* 197. *Adm. Sal.* 586. *R.* 2 *Lev.* 28.

That he was arreſted in *Com' prædict'*, tho' it does not ſay *infra Ballivam*; for it ſhall not be intended out of it, if it be in the County. *R. Yel.* 51.

That he was reſcued from *A.* Bailiff of a Liberty, to whom he directed his Warrant, without ſaying, that he had *Retorn' Brevium*, for it ſhall be intended

tended the Bailiff of the Sheriff, and the Words, *of a Liberty*, rejected. *R. Cro. El.* 781.

That ſeveral *ſe reſcuſſerunt*, without ſaying, *et quilibet eorum ſe reſcuſſit*, Per *Twiſden*; for it is in the Affirmative. 1 *Vent.* 2.

That he was reſcued from the Sheriff, tho' taken by the Bailiff. *Sti.* 417.

[If it appear on the Return, that the Warrant was to two, and the Arreſt by one only, yet the Return is good; for it is no Exception in what relates to public Juſtice. *Rex* v. *Roe*, *M.* 5 *G. Str.* 117.]

[If on a Return of a *Reſcous* of two Perſons, it is only ſaid, they could not afterwards be found, (without ſaying, *nec eorum aliquis*,) it is ill. *Rex* v. *Tucker*, *M.* 6 *G. Str.* 225. *Fort* 362]

[That the Bailiff arreſted Defendant, is good. *Ibid.*]

[That the Defendant *being* in my Cuſtody, is ſufficient. *Ibid.*]

(D. 6.) Proceeding againſt the Reſcuer.

If a *Reſcous* be returned, an Attachment goes againſt the Reſcuer. 2 *Cro.* 419. 2 *Vent.* 175. *Sal.* 586.

[The Sheriff's Return of a Reſcue, is of itſelf a Conviction of a Reſcue, and Proceſs immediately iſſues from the Crown-Office againſt the Reſcuer. *Rex* v. *Pember*, *P.* 8 *G.* 2. *B. R. H.* 112.]

[*C. B.* grants Attachment againſt the Reſcuer on Affidavit, always; *B. R.* ſometimes, but inclines to require a Return. *Sheather* v. *Holt*, *M.* 9 *G. Grindney* v. *Touſter*, *Meare* v. *Gallard*, *H.* 9 *G. Young* v. *Paine*, *T.* 5 *G.* 2. *Str.* 531.]

[The Exchequer will, on the Return, make the Attachment abſolute at firſt. *Williams* v. *Evans*, *M.* 1724. *Bunb.* 181.]

[The Attachment muſt be returnable at a general Return. *Rex* v. *Wilkins*, *P.* 11 *G. Str.* 624.]

And when taken, the uſual Fine in *B. R.* is four Nobles upon each. *D.* 2 *Jon.* 197. *Sal.* 586.

[The Fine is diſcretionary; *Rex.* v. *Elkins*, *M.* 8 *G.* 3. 4 *B. M.* 2129.]

Or, if he denies the Fact upon Interrogatories, he ſhall be diſcharged. *Sal.* 586.

[On *Guilty of a Reſcue*, returned, but in no other Caſe of Contempt, the Offender ſhall be puniſhed without being examined on Interrogatories; for the Return muſt not be traverſed. *Rex* v. *Elkins*. *M.* 8 *G.* 3. 4 *B. M.* 2129.]

But he ſhall not be diſcharged upon Affidavit. *Sal* 586.

[The Reſcuers, on ſubmitting to a Fine, may be permitted to read Affidavits to ſhew there was no real Arreſt. *Rex* v. *Minify*, *M.* 12 *G. Str.* 642.]

Or the Return may be tranſmitted to the Philazer, and Proceſs to Outlawry go againſt the Reſcuer. *Sal.* 586.

But the Return in *C. B.* is traverſable. *Dy.* 212. *but there in Marg. held cont.* and it is not now allowed. 2 *Vent.* 175.

[Return of *Reſcous* is not traverſable, and the Reſcuer muſt be brought into Court to be fined. *Barnes* 429]

So in *B. R. Dub. Cro. El.* 781.

And after Traverſe, he may be bailed. *Dy.* 212. *a.*

[The Reſcuer taken may be admitted to give Recognizance, to try falſe Return againſt Sheriff. *Barnes* 430.]

[If there is Verdict for Plaintiff, the Recognizance ſhall be diſcharged. *Ibid.*]

(D. 7.) When it is no a good Return.

But *Reſcous* is not a good Return upon a judicial Proceſs: As, upon a *Capias ad Satisfaciendum*, or *Capias Utlagatum*; for the Sheriff may take the *Poſſe Comitatus*. *R.* 2 *Cro.* 419.

Nor a *Reſcous* of Goods taken upon a *Fieri facias*. *R.* 2 *Rol.* 459. *l.* 30. *R.* 2 *Sand.* 344. *R. Lit.* 296. [For Sheriff may raiſe *Poſſe Comitatus*. *Barnes* 430.]

Vide more concerning *Reſcous* in *Diſtreſs*, (D. 3, &c.)—*Juſtices*, (R.)—*Pleader*, (2S. 29.)

RESERVATION.

Vide Rent, (B. 1, &c. —C. 6.)

RESIDENCE.

Vide Eſgliſe, (N. 4.)—*Pleader*, (2 S. 23.)

RESIDUARY LEGATEE.

Vide Chancery, (3 G. 7.)

RESIGNATION.

Vide Eſgliſe, (N. 2.)—*Franchiſes*.—(F. 30.)

RESPONDEAS OUSTER.

Vide Abatement, (I. 14.)

RESTITUTION.

Vide Chancery, (4 M.—*Forceable Entry*, (D. 5, &c.)—*Juſtices*, (2 A.)

—— of Temporalties.

Vide Prærogative. (D. 24.)

RESTRAINT OF TRADE.

Vide Trade, (D. 1, &c.)

RESULTING USE.

Vide Uſes, (K. 7.)

RESUMMONS.

Vide Abatement, (I. 32.)—*Proceſs*, (D. 2, 3.)

RESUMPTION.

Vide Parliament. (H. 21.)

RETAINER.

Vide Juſtices of Peace, (R. 58.)

RETAKING.

Vide Eſcape, (E.)

RETURN.

(A) Return of Writs and Proceſs, to whom it belongs.

THE Return of all Writs and Proceſs, of Right, belongs to the Sheriff within his County. *Skin.* 414.

And the King cannot grant to any other to have *Retorn' Brevium* in a County. 2 *Inſt.* 452. 1 *Vent.* 406.

A ſubſequent Sheriff may make a Return of a Writ delivered to his Predeceſſor; for it is not directed to any one by Name. 1 *Sal.* 266.

And if the King grants the Return of Writs in ſuch a Precinct to another, the Sheriff remains Officer to the Court, and the Grantee is but a Bailiff of a Franchiſe, and ought to make a Return to the Sheriff. 1 *Rol.* 119.

But by Preſcription, or the King's Grant, a Hundred, or Franchiſe, may have *Retorn' Brevium* within their Precinct. 1 *Vent.* 405. *R.* 1 *Rol.* 119.

So, a Biſhop. 2 *Rol.* 202. *l.* 40.

So, an Honour. *Hard.* 423.

So, the Lord of a Manor. *R. Hard.* 423.

A Grantee of *Retorn' Brevium* ſhall have the Execution thereof as incident, tho' it be not expreſſed. *R.* 1 *Vent.* 405.

[By 13 *G.* 2. *c.* 11. *ſſ.* 6. The Sheriff, at the Requeſt and Coſts of the Lord of a Franchiſe, having Return of Writs, ſhall appoint a Deputy to reſide in or near the ſame, who, on Receipt of Proceſs, ſhall iſſue his Warrant to the Lord of the Franchiſe to execute the Proceſs.]

(B) Remedy for entring a Franchiſe.

(B. 1.) When it lies.

IF a Sheriff enters the Franchiſe of him, who has *Retorn' Brevium* to do Execution, *&c.* an Action upon the Caſe lies againſt him. 1 *Vent.* 406. *R. Sho.* 18.

And it is not neceſſary to ſhew a Title to *Retorn' Brevium* in his Declaration; but it is ſufficient to ſay, that he was ſeiſed *de Officio Balij Libertatis*, and as Bailiff had a Right to the Return and Execution, *&c.* *R. Sho.* 18. *Vide Pleader*, (C. 39.)

So he need not ſhew that the Sheriff had Notice of the Grant; for it is upon Record. *R.* 1 *Rol.* 119.

(B. 2.) Whe

(B. 2.) When not.

(B. 2.) Where the Sheriff enters with a *Non omittas.*

But upon Default of the Bailiff, *&c.* the Sheriff may enter a Franchiſe; and therefore if the Bailiff of a Franchiſe does Nothing upon the Sheriff's Mandate, a Writ goes to the Sheriff *Quod non omittat propter aliquam Libertatem* by the Common Law. 2 *Inſt.* 453.

And this is now confirmed by the *St. W.* 2. 13 *Ed.* 1. 39.

So, if the Bailiff of a Franchiſe makes an inſufficient Return. 2 *Inſt.* 453.

[If Sheriff's Mandate to Bailiff of a Liberty, leaves a Blank for Name of Liberty, *Cap. ad Reſp.* ſhall be quaſhed, unleſs Bail is put in. *Barnes* 416.]

(B. 3.) Where he enters without a *Non omittas.*

So, by the *St. Marl.* 52 *H.* 3. 21. and the *St. W.* 2. 17. If the Bailiff of a Franchiſe does not make Replevin, nor Anſwer, the Sheriff may enter the Franchiſe without a *Non omittas.* *F. N.* 68. *F.* 2 *Inſt.* 140, 194.

So, if the King be Party, the Sheriff may enter the Franchiſe without a *Non omittas*: as upon Proceſs againſt a Felon. *Pl. Com.* 216. *a.* 1 *Vent.* 406.

Or the Proceſs for the King ſhall be with a *Non omittas*. *Semb. Pl. Com.* 216. *a.*

So, where the Sheriff acts as a Judge: As, upon an Inquiſition for Waſt; for by the Statute he is commanded *quod accedat ad Locum Vaſtatum.* 1 *Vent.* 406.

So, upon a Writ of Inquiry of Damages; for it is an Inqueſt of Office, and no *Venue* is neceſſary. *R.* 2 *Rol.* 461. *l.* 50. *Hob.* 83.

(C) Return how made.

(C. 1.) At what Time.

THE Return of a Writ ought to be made before, or upon, the Day of Return named in the Writ. *Mod. Ca.* 148, 159. 196, 250.

But a Return which appears to be made after the Day of Return is bad. *Mod. Ca.* 148, 159, 196, 250.

So, if the Day of the Return be *Sunday*, and the Return appears to be made, by the Record upon *Treſ. Trin.* which is a *Sunday*, it will be bad. *Mod. Ca.* 148, 159, 196, 250.

And in ſuch Caſe, it cannot be made upon a ſubſequent Day. *R. Mod. Ca.* 148, 159.

And the Court will take Notice of the Defect, without Aſſigment upon Record. *R. Mod. Ca.* 196.

[If a Writ is returnable at a Return-Day, and not a Day certain, the Sheriff need not return it till *quarto Die poſt. Makepiece* v. *Dillon, H.* 8 *G. Fort.* 363.]

(C. 2.) In what Manner.

So the Return ought to be under the Name of the proper Officer. *Pl. Com.* 63. *a.*

By the *St.* 12 *Ed.* 2. 5. The Sheriff ſhall put his Name to the Return, that the Court may know whoſe Return it is.

And in *London*, where there are two Perſons, both ought to put their Names; for they are but one Sheriff. *Hob.* 70. 39 *H.* 6. 41.

So, if a Return be by Coroners, all ought to ſign it. *Hob.* 70. It ought to be in the Name of All. *R.* 39 *H.* 6. 41. *Vide infra.*

But, if the Sheriff does not put his Name, the Return will be good, and the Sheriff ſhall be amerced. 1 *Leo.* 139. *Semb. cont. Hob.* 70. *Dub. Dal.* 68.

So, in the Pleading of a Return, the Name of the Sheriff need not be mentioned. *R.* 1 *Leo.* 139.

So, if a Return be in the Name of the Sheriff, by him who is not Sheriff, it cannot be aſſigned for Error; tho' the Court, upon Complaint of the Irregularity, will give Time to the Sheriff to diſavow his Return. 1 *Sal.* 265.

So, if a Return be by Coroners, it is ſufficient to have the Name of Office, without their proper Names. *R. Cro. El.* 703. *Mo.* 548.

So, if a Return be but by one Coroner, it ſhall be helped as an inſufficient Return. *R. Hob.* 70.

So now, by the *St.* 21 *Ja.* 1, 13. The Want of the Sheriff's Name ſhall be aided. *Vide Amendment*, (G. 1, 2.)

So, if a new Sheriff returns a Writ with a Return made by his Predeceſſor, which concludes *A. B. late Sheriff*, it will be good; for the Sheriff need not mention his Office; for his Name and Surname are ſufficient, and then if he adds *late Sheriff*, it does not prejudice. *R. Cro. Car.* 189, 570.

So, if the Sheriff indorſes, and does not ſubſcribe, his Name, it is ſufficient. *R. Carth.* 56.

If he indorſes his Name *A. B. Mic.* for *Mil.* it ſhall be amended. *Dub. F, g.* 5.

[If a Writ is directed to *Henry* Earl of *Litchfield*, and it is returned by *George Henry* Earl of *Litchfield*, it is good; for there can be but one Earl of *Litchfield*, and therefore a Variance of the Chriſtian Name is not material. *Ingolſby* v. *Martin*, *T.* 6 *G. Str.* 316.]

By *ſtat.* 20 *G.* 2. *c.* 37. The Sheriff ſhall, at the Expiration of his Office, turn over to his Succeſſor all Proceſs unexecuted, who ſhall execute and return. Sheriff neglecting to turn over, liable to make Satisfaction to Party aggrieved.]

(D) Return in Excuſe.

(D. 1.) *Tarde.*

A Return ought to ſhew Obedience to the Writ, or a good Excuſe for his Omiſſion: As he may ſay, *Quod Breve adeo tarde venit quod exequi non potuit.*

But by the *St. W.* 2. 39. The Plaintiff, or Demandant may require a Bill from the Sheriff upon the Delivery of the Writ to him, in the County, or upon Record, and then an Action will lie againſt him, if he returns *Tarde.* 2 *Inſt.* 452.

So *Tarde* is not a good Return upon a *Capias ad Reſpondendum.*

So the Sheriff cannot Return the Anſwer of the Bailiff of a Franchiſe, *quod tarde, &c.* 2 *Rol.* 461. *l.* 20. *Vide Poſt*, (F. 2, 3.)

Nor *Tarde* to Part: As, a Summons to one Defendant, *Tarde* as to another, *&c. R.* 2 *Leo.* 175. 4 *Leo.* 57.

(D. 2.) Neglect of the Party.

So he may ſay, that he was always ready to deliver Seiſin, *&c.* and gave Notice ſuch a Day, but the Plaintiff did not come to receive it. *R.* 2 *Rol.* 459. *l.* 25.

In Replevin, that no one came to ſhew the Cattle. 2 *Leo.* 67.

On a Writ which ſays, if the Plaintiff *fecerit te Securum, &c.* that the Plaintiff did not find Pledges.

But it is not a good Return to ſay, *Quod Viſum habere non potui.* 2 *Rol.* 460. *l.* 50.

That the Plaintiff did not proſecute his Writ. 2 *Rol.* 460. *l.* 35.

(D. 3.) *Mandavi Ballivo.*

So he may ſay, *Mandavi Ballivo, &c. qui nullum dedit Reſponſum.* 2 *Rol.* 460. *l.* 50.

Or, *who made ſuch a Return.* 2 *Rol.* 461. *l.* 45.

So upon an *Elegit*, there ſhall be a Mandate to the Bailiff, who ſhall make the Inquiſition, and Extent. *R. Cro. Car.* 319.

But upon a Writ of Inquiry directed to a Sheriff, he cannot ſay *Mandavi Ballivo, &c.* for he is to execute it at any Place within his County. *R. Hob.* 83. *Vide Ante*, (B. 3.)

Nor upon Proceſs at the Suit of the King. *Vide Ante*, (B. 3.)

Nor upon a *Diſtringas Juratores.* 19 *H.* 6. 67. *a.*

So by the *St. W.* 2. 39. The Treaſurer and Barons of the *Exchequer* ſhall deliver to the Juſtices a Roll of all Liberties that have Return of Writs; and if the Sheriff returns *Mandavi Ballivo* of any other Liberty, he ſhall be puniſhed by Fine and Ranſom. 2 *Inſt.* 452.

So, if he returns *Mandavi Ballivo* of a County, who has a Patent for the Return of Writs; for ſuch Grant is void. 2 *Inſt.* 452.

(D. 4.) *Reſcous.*

So he may return a *Reſcous*. *Vide Reſcous.* (D. 4, 5.)

(D. 5.) Defendant removed by *Habeas Corpus, &c.*

So the Sheriff may ſay, that the Defendant, being arreſted by him, was afterwards removed by *Habeas Corpus*, returnable ſuch a Day in *Chancery*, and there diſcharged out of his Cuſtody. 1 *Leo.* 145.

And was committed to another in Cuſtody. 1 *Leo.* 145.

That another Writ of the ſame *Teſte* and Return came to him before, to which he made a Return. *R. Mod. Ca.* 61.

(D. 6.) What is not a good Excuſe.

But, it is not a good Return, That he was reſiſted, and therefore diſabled to make Execution of the Writ; for by the *St. W.* 2. 13 *Ed.* 1. 39. he may take the *Poſſe Comitatus.* 2 *Inſt.* 454. *Vide Reſcous*, (D. 7.)

Quod Viſum Averiorum habere non potuit; for he does not ſhew any Endeavour. 2 *Rol.* 560. *l.* 40.

So, it is not a good Return that the Sheriff levied Goods upon a *Fieri facias*, and afterwards loſt them. *D.* 1 *Vent.* 52.

Or that ſuch Perſon, reſcued the Goods. *R.* 1 *Vent.* 21. *D.* 1 *Vent.* 52. *R. Sho.* 180. *Vide Reſcous*, (D. 4, 7.)

So *non eſt Inventus* is not a good Return, where the Sheriff has a Writ delivered to him againſt his Bailiff, and he ought to amend his Return, and ſhall be amerced. 1 *Vent.*. 12, 24.

(E) Return to a Writ in Chief.

(E. 1) Muſt be certain.

A Return to a Writ ought to be certain: and therefore if it ſays, *No Aſſets*, or *Non eſt inventus, prout mihi conſtare poterit*, it is bad. 2 *Rol.* 460. *l.* 25. (E. 1.) What will be uncertain.

Quod non deliberavit' pro eo quod Viſum habere non potuit; for perhaps he did not endeavour it. 2 *Rol.* 460. *l.* 40.

But, if the Return ſhews the Command of the Writ performed, it is ſufficient, tho' it does not ſay by whom, or how: As, if it ſays, *Infra nominatus A. captus eſt. Sal.* 589. (E. 2.) What ſufficiently certain.

Attachiari feci; for *qui facit per alium facit per ſe. R. Sal.* 589. *Skin.* 552.

So if it ſhews the Command of the Writ performed in Subſtance: As, if it ſays *Scire feci*, or *ſumm' feci, &c. per A.* and *B.* without ſaying *probos et legales Homines.* 2 *Rol.* 459. *l.* 50, 53.

So. if it refers to the Writ, it is ſufficient, without repeating the Words of it: As, *Scire feci prædict' A. eſſendi fec' Tenor' Brevis*, without ſaying where, or what to do. 2 *Rol.* 460. *l.* 2.

Ad faciend' quod Breve requirit. 2 *Rol.* 460. *l.* 5.

So, it is ſufficient if the Return may be aſcertained by the Writ: As, where a Writ is, *Scire facias A. B. Mil'*, it is ſufficient to ſay, *Scire feci Mil' infra nominat'*. 2 *Rol.* 460. *l.* 15.

That the ſaid A. B. eſt Mortuus, without ſaying *Miles*, 2 *Rol.* 460. *l.* 10.

Scire feci A.B. prout mihi præcipitur, without ſaying, *infra nominat'*. *Sal.* 589.

So Surpluſage in a Return ſhall be rejected: As, *parat' habeo ubicunq;* for *ubicunq;* ſhall be rejected. *R. Sal.* 589.

(E. 3.) Muſt anſwer to the Whole Writ.

So the Return ought to anſwer to the whole Command of the Writ; and therefore a Return of a Panel with nine Names, or other Number leſs than the Writ requires, is bad. 2 *Rol.* 461. *l.* 2.

So a Return upon a *Grand Cape*, *Cepi in Manus*, *&c.* if it ſays Nothing to the Summons of the Tenant. 2 *Rol.* 461. *l.* 5.

A Return upon a *Scire facias* againſt an Heir and Terre-tenants, if it ſays Nothing as to the Heir. *R. per* 3 *J. Cro. Car.* 295.

A Return upon an *Extendi facias* upon a Statute, that he has delivered ſuch Lands, if it does not ſay that there are no other Lands. 1 *Brownl.* 37.

So, if upon a *petit Cape*, where the Count was for a Houſe and Stable, the Return is, *Cepi* the ſaid Houſe, and ſays Nothing as to the Stable. *R. Jon.* 357.

So, if upon a *Fieri facias*, returnable *Oct. Mich'* the Return is, *Nulla Bona* at *Mich*; for, perhaps the Defendant had ſome before *Oct. Mich'*. *R. Cro. El.* 512.

(E. 4.) Muſt not be contrary to a Record.

But a Sheriff cannot make a Return contrary to his former Return upon Record: As, if he return upon a *Venire facias* twelve Jurors, he cannot ſay upon the *Diſtringas*, that One *nil habet*. 2 *Rol.* 458. *l.* 25.

So, if he has returned a Diſtreſs, he cannot upon the grand Diſtreſs, *Alias* or *Pluries*, ſay, *Nothing by which he may be diſtrained*. 2 *Rol.* 458. *l.* 35.

If, upon a *Capias pro Fine*, he returns *Cepi*, and upon the *Capias ad Satisfaciend'*, *non eſt inventus*. *R.* 1 *Leo.* 51.

So, he cannot make a Return contrary to a Return by his Predeceſſor. 2 *Rol.* 458. *F.*

But a Return, not repugnant to a former Return, may be made, tho' it varies therefrom: As, he may ſay, Evicted by an elder Title *meſne* between this and the former Writ, *et ſic nihil habet*. 2 *Rol.* 458. *l.* 30.

Or that he had the Land *pur auter Vie*, in Right of his Wife, *&c.* who is now dead. 2 *Rol.* 458. *l.* 33.

That he has Nothing *præter* the Iſſues *prius forisfact'*. 2 *Rol.* 458. *l.* 40.

So, a Return cannot be made contrary to a Matter of Record: As, if upon *plene Adminiſtravit* it be found for the Plaintiff, upon which Execution goes *de Bonis Teſtatoris* to the Sheriff of the ſame County, he cannot return *Nulla Bona*. 2 *Leo.* 67. *R. cont.* 3 *Leo.* 2. for he ſays *Nulla Bona in Balliva ſua*, and therefore it is not repugnant.

But after a Verdict for the Plaintiff upon *plene Adminiſtravit*, the Sheriff of the ſame County may return a *Devaſtavit*. 2 *Leo.* 67.

So, upon a *Conſtat* entered of Goods in another County, and a *Teſtatum* thereon, the Sheriff may ſay *Nulla Bona*. 2 *Leo.* 67.

(E. 5.) Muſt

(E. 5.) Muſt not falſify the Writ.

So the Return ought not to falſify the Writ; for That belongs to the Defendant: and therefore in Replevin he cannot ſay, *No Cattle taken*, for this goes to the Point of the Writ. *Sal.* 581. *Adm. cont. Kit.* 263. *a.*

If there be Judgment againſt *A. G.* Widow, and a *Ca. ſa.* thereon, and before Execution of the Writ ſhe marries *B.* the Sheriff cannot return, that She is now the Wife of *B.* for That falſifies the Writ and Record. *R.* 2 *Cro.* 323. 2 *Bul.* 81.

(E. 6.) Bad Return how aided.

(E. 6.) By Appearance.

But an inſufficient Return by the Sheriff will be aided by the Appearance of the Party: As, in a *Scire facias* upon a Fine, or Judgment, if the Sheriff does not mention the Summoners, or Viewers. *Kit.* 279. *b.*

In a *Scire facias* againſt an Heir and Terre-tenants, if he ſays Nothing as to the Heir. *Dub. Cro. Car.* 295, 6.

So, if he does not mention the Summoners upon the Return of a *Grand Cape*. *Kit.* 279. *b.*

So, if the Sheriff does not return Iſſues upon a *Diſtringas Juratores*, it will be aided by the Appearance of the Jurors. *Kit.* 279. *a.*

(F) Remedy againſt the Sheriff.

(F. 1.) If he do not make a Return.

IF the Sheriff does not return a Writ delivered to him, when it ought to be returned, he ſhall be amerced *quouſq.* 2 *Inſt.* 452.

By the *St.* 1 *Ed.* 6. 10. 5 (or 5 & 6) *Ed.* 6. 26. & 31 *El.* 9. the Sheriff, *&c.* forfeits 5 *l.* if he does not return Proclamations upon an *Exigent* in *Wales*, or a County Palatine.

And by the *St.* 7 *Ed.* 6. 1. If he does not return a Writ concerning Iſſues, or a Debt, to the King, the Sheriff may be fined, or amerced, by any Court of Revenue.

So, in a real Action, after Summons, if the Sheriff does not return the Writ, an Action upon the Caſe lies againſt him. *Adm. Cro. El.* 175. 1 *Leo.* 146. 1 *Rol.* 93. *l.* 20.

So, by the *St. W.* 2. 13 *Ed.* 1. 39. If any fear the Malice of a Sheriff, that he will not return a Writ, he may deliver his Writ in full County, and take a Bill from the Sheriff, or Under-ſheriff, mentioning the Names of the Demandant and Tenant, and Day of Delivery of the Writ, to which the Sheriff, or Under-ſheriff, on Requeſt, ſhall put his Seal, or, if he will not, ſome preſent may put their Seals, *&c.* And if the Sheriff return not the Writ, *&c.* the Demandant or Plaintiff ſhall have his Damages, with reſpect to the Nature of the Action, and the Danger by the Delay.

And by the *St.* 2 *Ed.* 3. 5. The Sheriff is obliged to take the Writ, and ſign ſuch Bill. 2 *Inſt.* 451.

And, in ſuch ſpecial Caſe, an Action upon the Caſe lies againſt the Sheriff, if he does not return the Writ. 2 *Inſt.* 452.

So a Demandant, or Plaintiff, to take the Benefit of the Statute, may deliver the Writ to the Sheriff, upon Record, in Court. *Ibid.*

So an Action upon the Caſe lies for not returning a *Capias Utlagatum* upon *Meſne* Proceſs. *Cl. Aſſ.* 262.

Or an *Exigent*.

So all *Meſne* Proceſs ought to be returned; for, otherwiſe, the Arreſt thereon will be wrongful, and falſe Impriſonment will lie againſt the Sheriff. *R.* 5 *Co.* 90. 2 *Rol.* 563. *l.* 20.

Yet falſe Impriſonment does not lie againſt the Party himſelf, a Bailiff, or him who acts in Aid of the Arreſt, if the Writ be not returned; becauſe the Return

is

is not in their Power. *Cont.* 2 *Rol.* 563. *l.* 30, 40. *R. acc.* 2 *Rol.* 562. *l.* 35, 45, 50.

So, if an *Elegit* be not returned, the Execution will be void; for it is not an Act of the Sheriff alone; but there ought to be an Inquiſition taken. *R.* 4 *Co.* 67. *a.* *R.* 5 *Co.* 90. *a.*

So, if an Officer of an inferior Court does not return Proceſs directed to him, falſe Impriſonment lies againſt him. *R.* 2 *Rol.* 563. *l.* 10.

So a *Certiorari* lies to the Sheriff, to return an Outlawry, or Rediſſeiſin.

But where final Proceſs iſſues, upon which no Judgment, or other Proceſs, is to be had, no Return is neceſſary: As, upon a *Fieri facias* which levied the whole Debt. *R.* 5 *Co.* 90. *Cro. El.* 209, 238. *Mo.* 468. *R.* 1 *Sal.* 318. *R.* 4 *Leo.* 194.

Or, a *Capias ad Satisfaciendum*. *R.* 4 *Co.* 67. *a.* 5 *Co.* 90.

Or a *Liberate* after an *Elegit*. *R.* 4 *Co.* 67. *a.* *R.* 5 *Co.* 90. *Semb.* 1 *Leo.* 280.

Or an *Habere facias Seiſinam*, or *Poſſeſſionem*. *R.* 4 *Co.* 67. *a.* 5 *Co.* 90.

[Sheriff ſhall be obliged to return *Ca. Sa.* tho' he ſhews by Affidavit, that he had taken Defendant, and diſcharged him on a Letter from a Peer that he was his menial Servant. *Wickham* v. *Hobart*, *M.* 10 *G.* 2. *B. R. H.* 348.]

[If Defendant is protected, and Protection regiſtered, the Court will diſcharge a Treaſury-rule for Return. *Barnes* 417.]

[If Sheriff returns Defendant protected, the Court will not make Rule for better Return; if inſufficient, Plaintiff may apply next Term for Attachment. *Barnes* 425.]

Yet if the Sheriff does not return a Judicial Proceſs, He may be amerced for his Contempt, for the Writ ſays, *ita quod habeas, &c.* *R.* 5 *Co.* 90. *b.*

So, if full Execution be not done upon a prior Writ, a ſubſequent Execution cannot be taken, till the former is returned; As, if only Part be levied upon a *Fieri Facias*. *R.* 1 *Sal.* 318.

So, regularly an Action upon the Caſe does not lie againſt the Sheriff for not returning a Writ, without other Default; for he ſhall be amerced. *Semb.* 2 *Inſt.* 452.

[By *Stat.* 20 *G.* 2. *c.* 37. The Sheriff is not liable to be called upon to make a Return, unleſs required ſo to do in ſix Months after the Expiration of his Office.]

[Plaintiff's Attorney having Blank-Warrants, does not carry Writ to Under-Sheriff till a Year after the Return, the Court will not make Rule for Return. *Barnes* 423.]

[If Sheriff directs Warrant to Bailiff of Plaintiff's Nomination, and has Indemnity indorſed on the Writ, yet Plaintiff may call for Return. *Barnes* 411.]

[If the Warrant is directed to Officers of Plaintiff's Nomination, not to the Officers of Bailiff of a Franchiſe, no Rule to Return Sheriff's Mandate. *Barnes* 416.]

[If Under-Sheriff abſconds, Court will make Rule, that leaving Copy of Rule to make Return at his Houſe, ſhall be good. *Barnes* 35.]

[If Defendant has continued in Cuſtody ſince Arreſt, Rule to bring in Body ſhall be diſcharged, otherwiſe if Eſcape. *Barnes* 32, 381.]

[Delivery of Original Rule to bring in Body to Under-Sheriff, is good Service on High-Sheriff. *Barnes* 405.]

(F. 2.) If he makes a falſe Return.

So, for a falſe Return the Sheriff may be amerced, according to an Ordinance againſt Sheriffs. *Raſt.* 372. *a.* By the *St.* 28 *Ed.* 1. 16.

So, if a Sheriff alters the Return of a Bailiff of a Franchiſe, he ſhall anſwer to the King, and to the Bailiff for the Damage to him. 2 *Rol.* 563. *l.* 25.

So, for a falſe Return, an Action upon the Caſe lies againſt a Sheriff by the Common Law. 2 *Inſt.* 452. *R.* 4 *Mod.* 404. *R. Mo.* 349.

So falſe Impriſonment; for it makes him a Treſpaſſer *ab Initio*. 2 *Rol.* 563. *l.* 15.

So, if a Bailiff of a Franchiſe makes a falſe Anſwer to the Sheriff, an Action upon the Caſe lies againſt him. *R.* 1 *Rol.* 98. *l.* 37. 99. *l.* 30.

So, if a Sheriff returns a falſe Anſwer of a former Bailiff, who was not a Miniſter at the Time of the Return, an Action upon the Caſe lies againſt the Sheriff. *R.* 1 *Rol.* 99. *l.* 35.

[The Court will not try the Truth of a Return, on a Motion to ſet aſide Proceedings, but the Party will have his Action. *Barr* v. *Satchwell*, *M.* 2 *G.* 2. *Str.* 813.]

[Fifty Pounds Damages are not exceſſive on an Action for a falſe Return of a Reſcue, whereon Plaintiff had been impriſoned. *Barnes* 229.]

But an inferior Officer ſhall not be prejudiced by a falſe Return of the Sheriff: As, if a Bailiff, *&c.* by Warrant of the Sheriff levies a Debt upon a *Fieri facias*, and delivers it to the Sheriff, who returns *tarde*, *&c.* an Action does not lie for the Money againſt the Bailiff. *R.* 1 *Leo.* 144. *Cro. El.* 181.

So, if a Sheriff returns a falſe Anſwer made by a Bailiff of a Franchiſe, the Sheriff ſhall not be amerced, nor ſhall there be an Action upon the Caſe againſt him; but againſt the Bailiff. 2 *Rol.* 461. *l.* 35. *R.* 1 *Rol.* 98. *l.* 37. 99. *l.* 30.

So, if a Sheriff returns the Anſwer of a Bailiff, *cepi Corpus*, and the Bailiff has not the Body, an Attachment goes againſt him. *Ray.* 193.

So an Action does not lie againſt a Sheriff for a Return in Courſe, tho' it be falſe: As, if he returns *Elongata* upon a Replevin, when he cannot make Deliverance; for he has no other Return, except that *None ſhewed him the Cattle*. *Sal.* 581.

(F. 3.) Or an inſufficient Return.

So the Sheriff ſhall be amerced for an inſufficient Return.

So, if the Sheriff returns an inſufficient Anſwer of the Bailiff of a Franchiſe, for he may ſay, *Nullum dedit Reſponſum*. *R.* 2 *Rol.* 460. *l.* 50.

As, that the Bailiff returned *Tarde*; for it is the Fault of the Sheriff that he had not the Writ before. 2 *Rol.* 461. *l.* 20.

So, if he returns the Anſwer of a former Bailiff, after a new one choſen. *R.* 2 *Rol.* 461. *l.* 10. *Cro. El.* 512.

If by his Return he ſays he did that, which the Bailiff ought to do. 2 *Rol.* 461. *l.* 30.

But an Action upon the Caſe does not lie for an inſufficient Return. *Semb.* *Cro. El.* 512.

(G) Averment againſt a Return.

SO the Return of a Sheriff is of ſuch high Regard, that generally no Averment ſhall be admitted againſt it: As, if *A.* be returned to be outlawed, he cannot ſay that he was only *Quarto* or *Quinto exactus*. *Kit.* 280.

If a Sheriff returns Iſſues upon *B.* it cannot be averred by *A.* to ſave the Iſſues, that his Name is not *B.* 2 *Rol.* 462. *l.* 5.

If a Sheriff, in *Redisſeiſin*, returns, *acceſſi ad Terras*, *&c.* it cannot be aſſigned for Error, *quod non acceſſit*. 1 *Leo.* 183.

If Coroners make a Return, it cannot be ſaid that only one made the Return. *R. Ray.* 485.

If a Sheriff returns, *Scire feci A. tenen' un' Meſ'*, *A.* cannot plead *non tenet*, *R. Cro. El.* 872. *R.* 2 *Mod.* 10.

But, where his Life, or Inheritance, is in Jeopardy, an Averment ſhall be allowed againſt the Return: As, if *A.* be outlawed for Felony, he may ſay that he tendred Surety before the fifth County. 2 *Rol.* 462. *l.* 15.

So, if a Summons be returned in a *Præcipe quod reddat*, the Tenant may ſay that he was ſummoned by another Name, for otherwiſe he will loſe by Default. 2 *Rol.* 462. *l.* 10.

So, if a Return be by an improper Officer: As if, upon a Certificate obtained by the Attorney-General to certify whether *A.* be outlawed, the Coroners return that he is outlawed, *A.* may ſay, *Non Utlagat'*, for the Sheriff, was the proper

Officer to certify the Outlawry, tho' it be pronounced by the Coroners. *R. Dy.* 223. *a.*

So, by the *St. W.* 2. 39. If the Sheriff returns none, or too ſmall Iſſues, it may be averred that he had greater Iſſues; upon which there ſhall be a Writ of Inquiry to the Judge of Aſſiſe.

Bad Return.

Vide Abatement, (H. 15.)

Falſe Return.

Vide Parliament, (D. 15.)

Vide more concerning *Retorn* in *Amendment*, (G. 1, 2.)—*Certiorari*, (C.)—*Execution*, (C. 7.)—*Habeas Corpus*, (E. 1, &c.—I.)—*Mandamus*, (D. 1, &c.)—*Parliament*, (D. 13.)—*Pleader*, (B. 5.)—*Proceſs*, (B.)—*Reſcous*, (D. 4, &c.)

RETRAXIT.

Vide Pleader, (X. 2.)

REVENUE.

Vide Parliament, (H. 20.)—*Prærogative*, (D. 39, &c. 87, &c.)

REVERSION.

Vide Copyhold, (C. 12.)—*Deviſe*, (N. 19.)—*Eſtates*, (B. 10, 11, 12, 31.)—*Officer*, (B. 13, 14.)

REVERSIONER.

Vide Receipt, (A. 2.—(B. 2.)—*Recovery*, (B. 7.)

REVERTER.

Vide Pleader, (3 E. 3.)

REVIEW.

Bill of Review.

Vide Chancery, (G.)

Commiſſion for Review.

Vide Prerogative, (D. 16.)

REVIVOR.

Bill of Revivor.

Vide Chancery, (F.)

RE-UNION.

Vide Franchiſes, (G. 1.)

REVOCATION.

Vide Arbitrament, (D. 5.)—*Chancery*, (4 O. 1, &c.)—*Copyhold*, (F. 12, 13.)—*Deviſe*, (F. 1, 2.)—*Eſgliſe*, (H. 10.)—*Poiar*, (A. 1.)—*Uſes*, (L. 2, &c.)

REVOUCHER.

Vide Voucher, (C.)

RIGHT.

Vide Droit.—*Garranty*, (F. G.)—*Grant*, (D.)—*Pleader*, (E. 22.)—*Releaſe*, (B. 1, &c.—E. 2.)—*Remitter*, (A. 1, &c.—C. 2, 3, 4.)

Right of Advowſon.

Vide Diſmes, (M. 10.)—*Quare Impedit*, (B. 1.)

Bare Right.

Vide Aſſignment, (C. 2.)

Right Cloſe.

Vide Droit, (C. 1, &c.)

Common Right.

Vide Copyhold, (S. 16.)—*Diſmes*, (K. 1, 14.)

Right upon a Diſclaimer.

Vide Droit, (F.)

Right of Dower.

Vide Dower, (G. 1.)

Right Patent.

Vide Droit, (B. 1, &c.—D.)

Prescriptive Right.

Vide Copyhold, (S. 17.)

Right of Ward.

Vide Gardian, (H. 1.)

Writ of Right.

Vide Battell, (A. 2.)—*Droit*, (B. 1, &c.—E, &c.)

RIOT.

Vide Forceable Entry, (D. 8, &c.)—*Justices of Peace*, (B. 9.)

ROBBERY.

Vide Appeal, (A. 2.)—*Justices*, (O. 1, &c.—Y. 8.)—*Pleader*, (2 S. 4.)

ROGUES.

Vide Justices, (S. 9.)—*Justices of Peace*, (B. 76, &c.)

ROLLS.

Master of the Rolls.

Vide Chancery, (B. 4.)

ROUT.

Vide Forceable Entry, (D. 8, &c.)

ROY.

(A) The King of England, who shall be.

(A. 1.) By Descent.

THE King of *England* holds his Kingdom by Descent, upon which his Succession is attendant. 7 *Co.* 10. *b. Calvin.*

And therefore if a King, having a defeasible Estate, dies seised, the Descent tolls the Entry of him who has the Right, which could not be, if the Title of the Successor was by Succession, and not by Descent. 7 *Co.* 11. *a. Calvin.*

And the King's Title is compleat by Descent, before his Coronation, which is but a Ceremony. 7 *Co.* 10. *b. Calvin.*

And therefore High Treason may be committed before, as well as after it. *R.* 7 *Co.* 11. *a. Calvin.*

So he begins his Reign upon the Day on which his Anceſtor died. *R. per all the J.* 1 *And.* 44. *Bend.* 79.

The Deſcent of the Crown varies from the general Rules of Deſcent as to a Subject: And therefore, if the King dies without Iſſue Male, having ſeveral Daughters, the Deſcent of the Crown, and Lands of the King ſhall be to his eldeſt Daughter only. *Co. L.* 15. *b.* (A. 2.) By what Rules the Deſcent ſhall be governed.

So, if he dies without Iſſue, or Brother, having ſeveral Siſters, it ſhall be to the Eldeſt. *Ibid.*

If he has a Son and a Daughter by one *Venter*, and a Son by another, and the eldeſt Son enters, and dies, the other Son ſhall have it, and not the Daughter of the whole Blood; for *Poſſeſſio Fratris*, or half Blood, does not take Place. *Ibid.*

If a King, by Deſcent on the Part of his Mother, purchaſes Land to him and his Heirs, it ſhall deſcend with the Crown to the Heir of the Part of the Mother, and not to the Heir of the Part of his Father. *Ibid.*

(A. 3.) By Act of Parliament.

So the Deſcent or Succeſſion of the Crown may be limited by Act of Parliament. *Vide Parliament*, (H. 18, 19.)

So by the *St.* 4 & 5 *An.* 8. & 6 *An.* 7. If any ſhall malitiouſly, adviſedly, and directly, by Writing, or Printing, maintain that the King and Parliament of this Realm cannot make Laws to bind the Crown of this Realm, and the Deſcent, Limitation, Inheritance and Government thereof, he ſhall be guilty of High Treaſon.

And if, by Preaching, Teaching, or adviſed Speaking, he ſo maintain, he ſhall incur a *Præmunire*.

So Qualifications may be required of him, who ſhall be admitted to the Poſſeſſion of the Crown, for Want of which he ſhall be excluded.

By the *St.* 1 *W.* & *M.* 2 *Parl.* 2. Every Perſon, who ſhall be reconciled to, or hold Communion with, the Church of *Rome*, or profeſs the popiſh Religion, or marry a Papiſt, ſhall be excluded, and for ever incapable to inherit, or enjoy the Crown, &c. And in ſuch Caſe the People are hereby abſolved from their Allegiance, and the Crown ſhall be enjoyed by ſuch, being Proteſtants, as ſhould have enjoyed the ſame, if the Perſon ſo reconciled, &c. were naturally dead.

And every King on the firſt Day of his firſt Parliament, or at his Coronation, which ſhall firſt happen, ſhall repeat, and ſubſcribe the Declaration againſt Popery in the *St.* 30 *Car.* 2.

So by the *St.* 12 & 13 *W.* 3. 2. Every one who ſucceeds to the Crown by the Limitations of the ſame Statute.

And *by the ſame Stat.* Every one who ſhall hereafter come to the Poſſeſſion of the Crown ſhall join in Communion with the Church of *England*, and not go out of his Realms * without Conſent in Parliament.

So the King cannot ſubject his Kingdom to the Pope, or any other, or to the Payment of a yearly Tribute to him, without the Aſſent of the Lords and Commons. 3 *Ed.* 1. 2 *Rol.* 163. *l.* 35. *R. in Parl.* 40 *Ed.* 3. 4 *Inſt.* 13.

* (Repealed by 1 *Geo.* 1. *Stat.* 2. *Ch.* 51.)

(B) The Stile of the King.

THE Stile of the King is not Parcel of his Name.

Yet upon the Omiſſion of an uſual Part of the Stile, a Writ ſhall be quaſhed: As, an Omiſſion of *Scotiæ*, &c. 2 *Lev.* 223.

William the *Conqueror* was ſtiled *Will. Rex*, or *W. Rex Anglorum. Co. L.* 7. *a.*

W. Rufus, *W. Rex*, or *Rex Anglorum*, or *Dei Gratiâ Rex Anglorum. Co. L.* 7. *a.*

Henr. 1. and *Stephen*, *Henr.* or *Steph. Rex Anglorum*, or *Dei Gratiâ Rex Anglorum. Ibid.*

Maud, *Matildis Imperatrix*, *H. Regis Filia*, *et Anglorum Domina. Ibid.*

Hen. 2. *H. Rex Angliæ*, *Dux Norman' & Aquitaniæ*, *& Comes Andegoviæ. Ibid.*

So *Ric.* 1. and K. *John*; but the laſt added *Dominus Hiberniæ*. *Co. L.* 7. *b.*

Hen. 3. had his Stile as K. *John*, till the 44th Year of his Reign when he was ſtiled only *Rex Angliæ*, *Dominus Hiberniæ*, and *Dux Aquitanæ*. *Ibid.*

So *Ed.* 1, 2. and the 3d till the 13th Year of his Reign, when he was ſtiled *Edw. Dei Gratiâ Rex Angliæ & Franciæ, & Dominus Hiberniæ*. *Ibid.*

So *R.* 2, *Hen.* 4, and *Hen.* 5. till the 8th Year of his Reign, when he was ſtiled *Henricus Rex Angliæ, Hæres & Regens Franciæ, & Dominus Hiberniæ*. *Ibid.*

Henr. 6 was ſtiled *H. Dei Gratiâ Rex Angliæ & Franciæ, & Dominus Hiberniæ*. *Ibid.*

After his Reſtoration he added *ab Inchoatione Regni ſui* 49, *& Recaption' Regiæ Poteſtatis* 1. *Ibid.*

So *Edw.* 4 *Ric.* 3. and *Hen.* 7. were ſtiled as *Hen.* 6. before his Depoſition. *Ibid.*

And *Sovereign Lord*, *Leige Lord*, *Highneſs*, or *Kingly Highneſs*, were Appellations uſed to the King before the Time of *Hen.* 4. to whom *Grace* was attributed, *excellent Grace* to *Hen.* 6. *Majeſty* to *Hen.* 8. *Co. L.* 7. *a.*

Hen. 8. was ſtiled *H. Dei Gra' Rex Angl' & Fran'*, *& Dominus Hibern'* in the Beginning of his Reign. *Co. L.* 7. *b.*

In the 10th Year of his Reign he added *octavus*, *Hen' octavus Dei gra' &c. Ibid.*

In the 13th Year, he added *Fidei Defenſor*. *Ibid.*

In the 22d Year, *Supremum Caput Eccleſiæ Anglicanæ*. *Ibid.*

In the 23d Year, he was ſtiled, *H. 8. Dei Gr' Angl' Franc' & Hib' Rex, Fidei Defenſor, & in Terrâ Eccleſiæ Anglicanæ & Hibern' ſupremum Caput*. *Co. L.* 7. *b.* and this by the *St.* 35 *H.* 8. 3. 4 *Inſt.* 344.

So *Edw.* 6. and *Mary* in the Beginning of her Reign; but ſhe ſoon omitted *ſupremum Caput*. *Co. L.* 7. *b.*

After her Marriage with *Philip*, the Stile was, *Philip & Mar' Dei Gra' Rex & Reg' Angliæ, Franciæ, Neapolis, Hieroſol', & Hibern' Fidei Defenſor' Princip' Hiſpan' & Sicil' Archd. Auſtriæ Duces, &c.*

Q. *Eliz.* was ſtiled *Eliz. Dei Gratiâ Angliæ Franciæ et Hiberniæ Regina Fidei Defenſor.*

So *Jam.* 1. *Cha.* 1. and 2 *Jam.* 2d, *&c.* Each was ſtiled *Dei Gratiâ Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defenſor.*

(C) Coronation.

CORONATION is the uſual Ceremony for the Inauguration of the King.

William the Conqueror and his Succeſſors were all *Coronâ inſigniti*. *Brad.* 190, 217, 233, 298, 421, 462, 522.

At the Time of the Coronation, the Conſent of the People was uſually aſked. *Bra.* 190.

So an Oath was uſually required of the King, To do Juſtice, maintain the Peace, the Laws and Liberties of the Church and Kingdom. *Bra.* 190, 217, 234, 421, 522. *Bract.* 1. *b.* *Stamf. P. C.* 99. *a.*

And ſometimes, by his Oath, he was bound to do ſome particular Things: As, *Stephen. Bra.* 272.

By the *St.* 1 *W. & M.* 6. Every King and Queen of this Realm at the Coronation ſhall ſwear, to govern according to the Statutes, Laws, and Cuſtoms of the Realm; to cauſe Law, and Juſtice in Mercy, to be executed; to maintain the Laws of God, the Proteſtant Religion eſtabliſhed by Law, the Rights and Privileges of the Clergy.

And by the *St.* 12 & 13 *W.* 3. 2. Every King and Queen, who ſucceeds to the Crown by Virtue of the ſaid Act, ſhall have the Coronation Oath adminiſtred to him at his Coronation purſuant to the ſaid Act.

But the King is Compleat before his Coronation. *Vide Ante*, (A. 1.)

(D) Dig

(D) Dignity of the King.

THE King of *England* has two Capacities, natural, and politick. 7 *Co.* 10. *a. Calvin. Pl. Com.* 213.

In reſpect of his politick Capacity, the King never dies. 7 *Co.* 10. *b. Calvin.*

So the King never has Diſability by Infancy, or Nonage. 7 *Co.* 12. *a. Calvin. R. Pl. Com.* 213.

So, if the King be attainted for high Treaſon; when the Crown deſcends, or comes to him, the Attainder is diſcharged, and he is able *ipſo facto*, when he takes upon him to be King. *R.* 1 *H.* 7. 4. *b.*

So the King cannot be ſeiſed to the Uſe of, or in Truſt for another. *Lane* 54.

And therefore, if a Truſtee be attainted for Treaſon, the King ſhall have his Moiety, or Share, to himſelf, diſcharged from the Truſt. *R. Lane* 54.

So the King is Supream within his Realm. *Vide Prærogative*, (D. 17.)

The Crown of *England* is an imperial Crown. *Dav.* 61. *a. by the St.* 24 *H.* 8. 12.

By the *St.* 16 *R.* 2. 5. It was declared that the Crown of *England* hath been ſo free at all Times, that it hath been in no earthly Subjection, but immediately ſubject to God touching the Regality of the ſame Crown, and to no other.

So the Dignity of the King continues tho' he be in a foreign Realm. 7 *Co.* 15. *b. Calvin.*

A Felony or other Offence in the King's Palace, if he be at *Paris*, &c. ſhall be puniſhed by the Marſhal of the *Marſhalſea*. 7 *Co.* 15. *b.*

So, if a foreign King be in *England*, he ſhall be allowed the Title and Privilege of a King; for *ſuprema & infima Dignitas eſt Univerſalis*. 7 *Co.* 15. *b.*

And therefore he ought to ſue, and ſhall be ſued by the Name of King: otherwiſe the Writ abates. *Ibid.*

But a foreign King ſhall be ſubject to the Laws here.

(E. 1.) Council of the King.

THE King has ſeveral Councils. *Co. L.* 110. *a.*

(E. 2.) Privy Council.

For Matters of State the King has his Privy Council. *Co. L.* 110. *a.*

(E. 2.) Preſident of the Council.

By Letters Patent One has been conſtituted, from antient Times, Preſident of the Council *durante Beneplacito*. 4 *Inſt.* 55.

In the Time of King *John* there was a Preſident of the Council. 4 *Inſt.* 55.

And there was in ſeveral ſubſequent Reigns, except in the Time of Queen *Elizabeth*. 4 *Inſt.* 55.

By the *St.* 21 *H.* 8. 20. The Preſident of the Council ſhall be aſſociate in all Acts appointed by the Statute to be done by the Chancellor, Treaſurer, or Privy Seal: As, Naming Sheriffs, ſetting Prices of Wines, &c.

He ought to attend the King's Perſon, to repreſent to him the Affairs of the Council. 4 *Inſt.* 55.

(E. 3.) The Reſidue of the Council.

The Reſidue of the Council conſiſts of ſuch a Number as the King pleaſes. 4 *Inſt.* 53.

And by the Cuſtom of the Realm upon Summons to the Council, and taking the Oath of a Privy Councellor, each of them continues of the Council during the King's Life without Letters *Patent* or other Grant. 4 *Inſt.* 54.

(E. 4.) The Duty of a Privy Councellor.

A Privy Councellor by his Oath is required, as far as Diſcretion ſuffers, truly to counſel the King, in all Matters treated in the Council, or by him as the King's Councellor. 3 *Ruſh.* 967.

And

And in all Things that may be for the King's Honour, and Behoof, and to the Good of his Realm and Subjects, without Partiality, not leaving ſo to do for Love, Meed, Doubt, or Dread of any.

To keep ſecret the King's Councel, and all communed in Council, without publiſhing it by Word, Writing, or otherwiſe, to any out of the Council, or to any of the ſame Council, if it touch him.

Nor for Gift, Meed, or Promiſe, to promote, favour, or hinder any Matter treated, or done in Council.

To help with all his Might the ſame Council in all that ſhall be thought by it for the Univerſal Good of the King, and his Land, and the Peace of the ſame.

To withſtand any, of what Degree ſoever, that ſhall attempt, or intend the contrary.

And generally to do All a good and true Councellor ought to do to his Sovereign. 4 *Inſt.* 54.

They ought to conſult of, and for the publick Good, the Honour, Safety, and Profit of the Realm. 4 *Inſt.* 53.

Each of them ought to be expert, provident for the King, *parcus ſui nec avidus alieni.* 4 *Inſt.* 53.

[Offering Money to a Privy Counſellor to procure the Reverſion of an Office in the Colonies, of the Gift of the Crown, is a Miſdemeanour at Common Law puniſhable by Information, even tho' it is a ſaleable Office. *Rex* v. *Vaughan*, or Duke of *Grafton*'s Caſe. *M.* 10 *G.* 3. 4 *B. M.* 2494.]

By the *St.* 12 & 13 *W.* 3. 2. After the Limitation ſettled by this Act takes Effect, all Reſolutions taken in Council ſhall be ſigned by ſuch of the Council as ſhall adviſe, and conſent to the ſame.

And all Matters relating to the well governing of this Kingdom, properly cognizable in the Privy Council by the Laws and Cuſtoms of this Realm, ſhall be tranſacted there. But by the *St.* 4 & 5 *An.* 8. theſe Clauſes are repealed.

(E. 5.) The Power.

The Privy Council may commit a Criminal, as an incident. *Skin.* 597.

So any of the Privy Council. *Semb.* 5 *Mod.* 81. *Skin.* 599.

So a Secretary of State. *Skin.* 598.

And the Commitment may be to a Meſſenger till Examination, or for a little Time till a Removal to Gaol. *Skin.* 599.

[Before 3 *Car.* 1. all Privy-Counſellors *exerciſed* the Power to commit; they then diſuſed it, but ſtill preſcribed to commit *per Mandatum Regis*; but that firſt Power was not warranted; they ought only to commit in Council, not out of it. The *Mandatum Regis*, is only his Mandate in Council. *Entick* v. *Carrington*, *M.* 6 *G.* 3. 2 *Wilſ.* 275.]

(E. 5.)

But by the *St.* 16 *Car.* 1. 10. The King, or Privy Council have not Juriſdiction, &c. by Bill, Petition, &c. to draw into Queſtion, determine, or diſpoſe of the Lands, Tenements, Goods, or Chatels of any Subject.

So the Privy Council cannot lay an Impoſition, Tallage, or Charge upon the Subject in any Manner. 2 *Rol.* 174. *l.* 10. *Vide Parliament*, (H. 9, &c.)

[The King in Council cannot decree *in Perſonam* in *England* (except in ſome criminal Matters) therefore cannot decree an Agreement that is diſputed. *Penn* v. *Ld. Baltimore*. *P.* 1750. 1 *Vezey* 444.]

(F) The Queen.

(F. 1.) The Privileges of a Queen Conſort.

THE Queen, Conſort of the King, is a Perſon exempt by the Common Law, and has Capacity to ſue and be ſued alone without the King. *Co. L.* 133. *a.* *Vide Action*, (B. 2.)

(E. 4.)

So She has Capacity take Lands and Tenements by Grant to her from the King himſelf. *Co. L.* 133. *a.* 2 *Rol.* 213. *l.* 20.

So She may make *Grants*, and take Eſtates by herſelf, without the King. *Co. L.* 133. *a.* 2 *Rol.* 213. *l.* 30. 4 *Co.* 23. *b.*

She may give a Bond or other Specialty. 2 *Rol.* 213. *l.* 25.

So the Queen has Privilege, that She ſhall not be amerced. *Co. L.* 133. *a.*

Nor find Pledges. *Co. L.* 133. *a.*

Nor pay Toll. *Co. L.* 133. *b.*

So the Queen has the Diſpoſition of her Servants, excluſive of the King.

And therefore, if the King grants to another to be Sadler to the Queen, it will be void; for he ought to be a Servant to the Queen by her own Grant. *Dub.* 2 *Rol.* 213. *l.* 42.

So ſometimes the King grants that She ſhall have the ſame Remedy, as the King, for the Recovery of her Debts. *Mad.* 247.

(F. 2.) *Aurum Reginæ.*

So by the Common Law, there is a Duty to the Queen-Conſort, *pro Centum Marcis, una Marca, de iis, qui ſponte ſe obligant* to the King. 12 *Co.* 21.

It is called the Tenth Part. *Blo. Nom. Verb. Queen Gold.*

And therefore, if a Subject *ſponte ſe obligat* to pay Money to the King for Licence to alien, or purchaſe in *Mortmain*, this Duty accrues to the Queen. *R.* 12 *Co.* 22.

Or, for the Grant of a Fair, Market, or other Franchiſe, or Liberty granted by the King *de novo.* 12 *Co.* 22.

Or for the Reſtitution of Liberties. *Mad.* 240, 241.

But it is not due upon a Fine to the King by Judgment, or for an Alienation, or otherwiſe for Money paid to the King by Compulſion. *R.* 12 *Co.* 21.

Nor for Money paid to the King in Conſideration of a Leaſe, or Grant of Poſſeſſions, or any Revenue of the King. *R.* 12 *Co.* 21.

Nor for Money paid for the Grant of a Fair, Market, Waifs, *&c.* or other Franchiſe *in eſſe.* 12 *Co.* 22.

Nor for Money given by a Subject, to the King, *ex Gratiâ*; for he is not bound to this. *R.* 12. *Co.* 21.

(F. 3.) Queen Dowager.

The Hoſpital of *St. Katharine* was founded by *Eleanor* Dowager of K. *H.* 3. with Reſervation of the Patronage *ſibi & Reginis ſuccedentibus*; wherefore the Queen Dowager ſhall always have the Nomination of a Maſter, when there is not a Queen Conſort *in eſſe.* *R. Ca. Ch.* 215. *Skin.* 15.

So tho' there be a Queen Conſort. *Per Hale. Ca. Ch.* 215.

So, if a Queen Conſort grants, it is not determined when She becomes Dowager. *R. Skin.* 15.

(G) Iſſue of the King, the Prince.

THE eldeſt Son and Heir apparent of the King is called the Prince, *quaſi primus poſt Regem. Dod. Noby.* 9.

King *Ed.* 3. by his Charter 18 *Mart.* 7. *Ed.* 3. at *Pontefract*, created his Son *Edward* the Black Prince (then but three Years of Age) *Comitem Com' Palat' Ceſtriæ habend' ſibi & Hæredibus ſuis, Regibus Angliæ.* 4 *Inſt.* 244.

By Charter 17 *Mart.* 11 *Ed.* 3. he created him Duke of *Cornwall, habend' eidem Duci, & ipſius, & Hærædum ſuorum, Regum Angliæ, Filiis promogenitis, & dicti Loci Ducibus in Regno Angliæ Hæreditarie ſucceſſuris.* Which Charter was eſtabliſhed by Authority of Parliament. *R.* 8 *Co. The Prince's Caſe.* 16.

By Charter eſtabliſhed by Authority of Parliament 17 *Ed.* 3. he created him *Principem Walliæ, habend. ſibi & Hæredibus ſuis, Regibus Angliæ, imperpetuum,* and inveſted him by a Chaplet of Gold, a Gold-Ring. and a Silver Wand *juxta Morem*, but now a Golden Wand is uſed. 4 *Inſt.* 243.

And therefore every first-born Son of such a King, as is Heir to the Black Prince, immediately upon the Advancement of his Father to the Crown, shall be Duke of *Cornwall* in the Life of his Father, (to whom he is Heir apparent) without other Creation. *R.* 8 *Co. The Prince's Case* 16. *b.* 29. *b.*

And shall have a Fee-simple in such Dukedom, and the Possessions of the Dutchy, tho' it does not descend according to the Rules of the Common Law. *R.* 8 *Co. The Prince's Case* 27.

And his Wife shall be endowed. 8 *Co. The Prince's Case* 7.

So, if the Prince be created *Princeps Walliæ*, or *Comes Cestriæ*, he has a Fee-simple, tho' it be limited to him and his Heirs, Kings of *England*.

But the Prince shall not be Prince of *Wales*, or Earl of *Chester*, till Creation; for upon his Death, or Advancement to the Crown, these Dignities are merged and extinct in the Crown. 4 *Inst.* 243. 1 *Bul.* 133.

And the Patent of Creation shall be inrolled in *B. R.* 1 *Bul.* 133.

So, if the first-born Son of the King dies in the Life of his Father, his first-born Son shall not be Duke of *Cornwall* without a special Creation, tho' he be Heir apparent to the Crown; for he is not the first-born Son of a King of *England*. *R.* 8 *Co.* 29, 30. *The Prince's Case.*

So the first-born Daughter of the King shall not be Dutchess of *Cornwall*, tho' She be Heir presumptive to the Crown; for it must be a Son. *R.* 8 *Co.* 30. *a. The Prince's Case.*

So, if the King's eldest Son dies, his 2d Son, tho' he be Heir apparent, shall not be Duke of *Cornwall*, without a special Creation; for he was not the first-born Son. 8 *Co.* 30. *a. The Prince's Case.*

The Prince shall be immediately seised of the Dutchy of *Cornwall*, and all Possessions belonging thereto.

But till a Prince is born, the King is seised of all the Possessions.

So, if there be not a Queen Consort, or Dowager, the King shall be seised of all their Possessions. *R. Ca. Ch.* 215.

So the King may present to an Advowson, and his Clerk continues after a Prince is born. *Ca. Ch.* 215.

So, if he nominates the Master of an Hospital, *&c.* *R. Ca. Ch.* 215.

Yet a Lease for Years by the King determines by the Birth of a Prince. *Ca. Ch.* 215.

The Prince of *Wales* had many Privileges allowed him by the Law.

The Prince, as well as the King, has used to send Letters to the *Exchequer*, for Favour, or Excuse to his Attendants. *Mad.* 626.

So a Grant by the King to the Prince does not make an Alienation from the Crown; for the Land continues Parcel of the Crown. *Pal.* 89.

(H) Custos Regni.

(H. 1.) How created.

IF the King be absent out of the Realm, he by his Letters Patent may constitute one, or more, to be *Custos Regni* in his Absence. 2 *Inst.* 26. 4 *Inst.* 6.

And he shall be called the *Chief Justicier*, or Guardian of the Realm. *Mad.* 21, 22.

(H. 1.) The Authority of the *Custos*.

The Chief Justicier presides in all Cases Criminal and Civil, and in the *Exchequer*. *Mad.* 21.

He holds Pleas, lets the King's Manors, *&c.* and makes Allowances to Accountants in the *Exchequer*. *Mad.* 135.

Such

Such Cuſtos, or Guardian, is *quaſi Prorex*. 2 *Inſt*. 26.

And may ſummon a Parliament in the King's Abſence. 2 *Inſt*. 26. *Vide Parliament*, (E. 1.)

But there ought to be a ſpecial Commiſſion to him to hold, and proceed in Parliament. 4 *Inſt*. 6.

The Writ of Summons to Parliament ſhall be teſted by him. 4 *Inſt*. 6.

All original Writs ſhall be teſted by him. 2 *Inſt*. 26.

By the *St*. 8 *H*. 5. 1. A Parliament held by Writ of Summons from the Guardian of the Realm, when the King is abroad, ſhall not be diſſolved by Arrival of the King.

Aſſent of the King.

Vide Parliament (L. 42.)

King's Bench.

Vide Courts, (B. 1, &c.)

King's Charter.

Vide Trade. (B.—D. 1.)

King's Grant.

Vide Grant, (G. 1, &c.—*Ireland*. (D.)

King's Juſtices.

Vide Juſtices, (K. 8.)

King's Protection.

Vide Abatement, (F. 11.)

King's Tenant.

Vide Alienation, (A. 1, 2.)

Vide more concerning *the King in Action*, (B. 1.—C. 1.)—*Adminiſtration*, (B. 3.)—*Ancient Demeſne*, (C. 1.)—*Ann Jour & Waſt*.—*Aſſignment*, (D.)—*Chaſe*, (A. 1, 2.)—*Condition*, (A. 3.)—*Copyhold*, (S. 12.)—*Dett*, (G. 1, &c.)—*Diſmes*, (C. 3.—E. 3, 7.)—*Eccleſiaſtical Perſons*, (A.)—*Eſgliſe*, (H. 5, 6, 8.)—*Execution*, (B. 1, &c.)—*Hoſpital*, (B, C.)—*Idiot*, (C.—D. 4.)—*Juſtices*, (K. 1, &c.)—*Money*, (B. 5, &c.)—*Officer*, (K. 10.)—*Pardon*, (A.)—*Parliament*, (D. 1.—F. 1, 2.—G. 10.—H. 2, 4, 20, 24.—L. 10, 34, 42.—R. 8.)—*Patent*, (A.—C. 1, &c.)—*Prærogative*, *per Totum*.—*Præſcription*, (F. 1.)—*Tenure*—*Viſcount*, (C. 5.)—*Viſitor*, (A. 1.)—*War*, (B. 1, &c.)

ROYAL MINES AND FISHES.

Vide Prærogative, (D. 50.)

SABBATH.

Vide Temps, (B. 3.)

SACRAMENTS.

(A) The Sacraments; how adminiſtred.

BY the *St.* 1 *Ed.* 6. 1. The Bleſſed Sacrament ſhall be miniſtred to the People in both Kinds, except Neceſſity otherwiſe require. Revived by the *St.* 1 *El.* 1. *S.* 14.

By the *St.* 1 *El.* 2. and 13 & 14 *Car.* 2. 4. All Miniſters, *&c.* ſhall adminiſter both Sacraments according to the Order and Form of the Book of Common Prayer, *&c.*

And by the *St.* 1 *El.* 2. All Laws, *&c.* whereby other Adminiſtration of Sacraments is eſtabliſhed, ſhall be void.

By the *St.* 24 *H.* 8. 12. All Prelates, Paſtors, *&c.* ſhall miniſter Sacraments, *&c.* to all Subjects of the Realm, notwithſtanding Citation, Inhibition, *&c.* from the See of *Rome*, *&c* and he, who, by Occaſion of ſuch Inhibition, *&c.* refuſes to adminiſter them, ſhall have a Year's Impriſonment, and Fine and Ranſom at the King's Will.

(B) Divine Service.

BY the *St.* 1 *El.* 2. and 13 & 14 *Car.* 2. 4. All Miniſters in Cathedral, Pariſh Church, or other Place of Publick Worſhip, (except a Congregation tolerated by the *St.* 1 *W.* & *M.* 8.) ſhall be bound to uſe Morning, Evening and all other Publick Prayer, in the Order and Form preſcribed by the Book of Common Prayer, *&c.* And all Laws, whereby other Service or Common Prayer is eſtabliſhed, ſhall be void.

And by the *St.* 13 & 14 *Car.* 2. 4. *S.* 17. No other Form ſhall be uſed.

By the *St.* 24 *H.* 8. 12. He who by Occaſion of Inhibition, Citation, *&c.* from the See of *Rome*, *&c.* ſhall refuſe to uſe Divine Service, *&c.* ſhall have a Year's Impriſonment, and Fine and Ranſom at the King's Will.

By the *St.* 1 *El.* 2. If any Parſon, Vicar, *&c.* refuſe to uſe the Common Prayer, or uſe other Form, for the firſt Offence he ſhall forfeit a Year's Profits of all his Spiritual Promotions, and ſix Months Impriſonment without Bail; for the ſecond Offence ſhall be deprived and ſuffer a Year's Impriſonment; for the third Offence ſhall be deprived and impriſoned for Life.

But it is not ſufficient to ſay, that he uſed *alias Preces aut alio Modo*, unleſs he uſed others in lieu of the Common Prayer. *R.* 3 *Mod.* 79.

(C) Who may adminiſter.

BY the *St.* 13 & 14 *Car.* 2. 4. *S.* 14. No Perſon, not having then Epiſcopal Ordination, ſhall adminiſter the Lord's Supper before he ſhall be ordained Prieſt according to the Form preſcribed by the Book of Common Prayer, on Pain of 100*l.* a Moiety to the King; of the other Moiety, half to the Poor, half to him that ſhall ſue, *&c.*

(D) Remedy

(D) Remedy for not doing it.

BY the *St.* 1 *Ed.* 6. 1. The Miniſter ſhall not, without lawful Cauſe, deny the Sacrament to any that deſires it.

So a Parſon cannot demand a Fee for adminiſtring the Sacraments: As, for a Chriſtning; for no Fee can be due but by Special Cuſtom. 1 *Sal.* 332.

Nor can it be due by Cuſtom, where the Chriſtning is in another Pariſh. *Ibid.*

Or at another Place, or Chapel, by another Perſon in the ſame Pariſh. *R.* 1 *Sal.* 332.

By the St. 2 & 3 *Ed.* 6. 1. (*revived upon the Repeal of the St.* 1 *Ma.* 2. *made by the St.* 1 *Jac.* 25.) *and by the Stat.* 1 *El.* 2. *applied by the St.* 13 & 14 *Car.* 2. 4. *to the Form then introduced*, If any Miniſter refuſe to uſe the Common Prayer, or uſe open Prayer or Sacraments in other Form, or preach or ſpeak in Derogation of it, for the firſt Offence being convicted at the next Seſſions by Verdict, Confeſſion, or Notoriety of the Fact, he ſhall loſe a Year's Profit of all his Spiritual Promotions, and be impriſoned ſix Months without Bail; and if he have no Spiritual Promotion, twelve Months; for the ſecond Offence ſhall be deprived *ipſo facto* of Spiritual Promotions, and ſuffer a Year's Impriſonment, or having no Spiritual Promotions, during Life; for the third Offence ſhall be deprived and ſuffer Impriſonment for Life.

By the *St.* 13 & 14 *Car.* 2. 4. Every Miniſter, *&c.* in two Months after Promotion ſhall read and declare Aſſent to the Common Prayer, or be *ipſo facto* deprived of all Eccleſiaſtical Promotions.

And every Incumbent, who, having a Curate, ſhall not read the Common Prayer publickly once a Month, being convict on Confeſſion, or Oath of two Witneſſes before two Juſtices of Peace, forfeits for every Offence 5*l.* on Non-payment in ten Days, to be levied by Diſtreſs and Sale to the Uſe of the Poor.

Vide Ante, (A. B.)

(E) Penalty for Neglect of the Sacrament and of Divine Service.

BY the *St.* 5 & 6 *Ed.* 6. 1. All Perſons ſhall reſort (having no reaſonable Excuſe) to the Pariſh Church or uſual Place of Divine Service on every *Sunday* and Holiday, and there abide during Common Prayer, Preaching and other Service, on Pain of Puniſhment by Cenſures of the Church.

By the *St.* 1 *El.* 2 He ſhall beſides forfeit 12*d.* for every Offence, to be levied by Diſtreſs to the Uſe of the Poor; of which Act Juſtices of *Oyer* and *Terminer* and Aſſiſe, and Mayors, *&c.* of Corporations have Coniſance at the next Seſſions. And by the *St.* 23 *El.* 1. any Juſtice of Peace within a Year and Day after the Offence.

By the *St.* 23 *El.* 1. He ſhall over and above forfeit 20*l.* for every Month's Abſence; and on Certificate in *B. R.* by the Ordinary or a Juſtice of Peace, of a twelve Month's Abſence, ſhall be bound to Good Behaviour with two Sureties in 200*l.* till Conformity. A third Part of the Penalty goes to the Queen, a third to the Poor, and a third to the Informer: But on Submiſſion at the Seſſions at the Trial for the firſt Offence, he ſhall be diſcharged: But by the *St.* 29 *El.* 6. The Conviction ſhall be only in *B. R.* or at the Aſſiſes; And by the *St.* 35 *El.* 1. The Penalty ſhall be recovered by Debt, *&c.* in *B. R. C. B.* or *Exchequer*: Yet by the *St.* 3 *Jac.* 4. Juſtices of Peace at Seſſions may inquire of all Offences againſt former Laws for not repairing to Church.

By the *St.* 29 *El.* 6. and 3 *Jac.* 4. On an Indictment at the Aſſiſes, or Seſſions, for not repairing to Church or Sacrament, Proclamation may be made that the Party render himſelf to the Sheriff by the next Aſſiſes, or Seſſions, and if he appears not, his Default ſhall be recorded, and there ſhall be Judgment againſt him, as if convicted by Verdict.

By the *St.* 3 *Jac.* 4. The 12 *d.* for every *Sunday* may be levied by one Juſtice on Confeſſion or Oath, within a Month after the Fault, by Diſtreſs and Sale, and and for Want of Diſtreſs, by Impriſonment till Payment.

If there be a Conviction upon the *St.* 29 *El.* 6. there ſhall be no Information by an Informer afterwards upon the *St.* 23 *El.* 1. *Lane* 60.

By theſe Statutes, if a Perſon be convicted for a Monthly Abſence from Church, the Conviction ſhall be certified into the *Exchequer*, and if he pay not, within *Eaſter* or *Michaelmas* Term after, 20 *l.* for every Month in the Indictment, and 20 *l.* for every Month after, without other Indictment, until his Conformity or Death; Proceſs may go out of the *Exchequer* to ſeiſe all his Goods and two Parts of his Lands and Tenements.

And by the *St.* 3 *Jac.* 4. The King may either accept 20 *l. per Menſem*, or iſſue Proceſs againſt his Goods, or two Parts of his Lands at Pleaſure.

By the *St.* 23 *El.* 1. of which Juſtices of the Peace may inquire, He who keeps a Schoolmaſter who reſorts not to Divine Service for a Month, or is not allowed by the Biſhop, forfeits 10 *l. per Menſem*; and ſuch Schoolmaſter ſhall be diſabled to teach Youth, and ſuffer a Year's Impriſonment. And by the *St.* 1 *Jac.* 4. He who retains forfeits 40 *s. per Diem.*

By the *St.* 35 *El.* 1. (declared to be in force by the *St.* 16 *Car.* 2. 4.) If a Perſon above ſixteen, who hath without Cauſe abſented a Month from Church, perſuade any other not to reſort to Divine Service or Communion, or to impugn the Queen's Authority, he ſhall be committed without Bail till he conform, and if he conform not in three Months on Requeſt by the Biſhop, a Juſtice of Peace, or Miniſter of the Pariſh, ſhall at the Aſſiſes or Quarter-Seſſions abjure the Realm, and forfeit all his Goods and Lands during Life; which Abjuration at the Seſſions the Juſtices ſhall certify to the Aſſiſes.

By the *St.* 3 *Jac.* 4. If any willingly keep or harbour in his Houſe or Service any Servant or Stranger, except Parent or Ward, who ſhall without Cauſe forbear for a Month together to reſort to Divine Service, he ſhall forfeit 10 *l. per Menſem.*

But by the *St.* 1 *W. & M.* 18. The ſaid Statutes extend not to Diſſenters, who acknowledge the Trinity, and are not Popiſh Recuſants, who ſhall take the Oaths of Allegiance and Supremacy, and ſubſcribe the Declaration in the *St.* 30 *Car.* 2. *St.* 2. or ſhall make the ſaid Declaration, and the Declaration of Fidelity and Profeſſion of Belief there preſcribed, which the Juſtices of Peace at their Quarter-Seſſions ſhall adminiſter and record, and who ſhall go to any open religious Aſſembly allowed by that Act.

A *Feme Covert* is within the *St.* 1 *El.* & 23 *El.* and an Information lies againſt the Huſband. *Dub. Sav.* 25. *R.* 2 *Cro.* 529.

But by the *St.* 7 *Jac.* 6. If ſhe does not conform within three Months after Conviction, ſhe ſhall be committed without Bail by two Juſtices, *&c.* till Conformity, unleſs the Husband pays 10 *l. per Month*, or a third Part of all his Lands at his Election.

Yet this *Stat.* 7 *Jac.* is no Excuſe upon the other Statutes. *R.* 2 *Cro.* 529.

If the Information be for ten Months, it is well, tho' an Abſence for a Year be alledged. *R.* 2 *Cro.* 530.

The Information may be in *C. B.* or *Exchequer*, ſince the *St.* 28 (or 29) *El.* 6. as well as in *B. R. Cont.* 11 *Co.* 60. *b.* 61. *a. R. acc. Hob.* 204.

(F) Profanation

BY the *St.* 1 *Ed.* 6. 1. If any deprave or uſe contemptuous Words of the Sacrament, three Juſtices of the Peace (*Quorum unus*) may take Information by two Witneſſes within three Months, bind him to the Quarter-Seſſions, where he may be indicted, and if convicted ſuffer Impriſonment, Fine and Ranſom at the King's Pleaſure.

By the *St.* 2 & 3 *Ed.* 6. 1. and 1 *El.* 2. If any Miniſter preach or ſpeak in Derogation of the Common Prayer, being convicted at the next Seſſions by Verdict,

dict, Confeſſion, or Notoriety of the Fact, he ſhall for the firſt Offence loſe a Year's Profits of all his Spiritual Promotions, and be impriſoned ſix Months without Bail, and if he have no Spiritual Promotion twelve Months; for the ſecond Offence ſhall be deprived *ipſo facto* of Spiritual Promotions, and ſuffer a Year's Impriſonment, or having no Spiritual Promotion, during Life; for the third Offence ſhall be deprived and ſuffer Impriſonment for Life.——And if any by Songs, *&c.* deprave or deſpiſe the Common Prayer Book, or cauſe any to uſe another Form, or interrupt the uſing it, or the Miniſtration of the Sacraments, being convicted *ut ſupra*, for the firſt Offence he ſhall forfeit 100 Marks, or on Non-payment in ſix Weeks be impriſoned ſix Months without Bail; for the ſecond Offence 400 Marks, or on Non-payment a Year's Impriſonment; for the third Offence all his Goods and Chattels, and Impriſonment for Life.

As to Profanation of the Sabbath, *Vide in Temps*, (B. 3.)
As to Profanation by Curſing and Swearing, *&c.* *Vide in Juſtices of Peace*, (B. 23.)
Vide more concerning *the Sacrament* in *Officer*, (K. 7.)

SAFE CONDUCT.

Vide Admiralty, (E. 8)—*Prærogative*, (B. 5.)

SALE.

Vide Action on the Caſe for a Deceipt, (A. 8, 9.)—*Bargain and Sale.*—*Biens*, (D. 3.)—*By-Law*, (E. 2.)—*Diſtreſs*, (D. 7, 8, 9.)—*Market*, (E.)—*Parliament*, (H. 5.)—*Popery*, (B. 11.)——*Sewers*, (E. 8, &c.)

Sale of Offices.

Vide Officer, (K. 1.)——*Pleader*, (2 W. 27.)

SANCTUARY.

Vide Abjuration, (D.)

SATISFACTION.

Vide Accord.

Of a Bond.

Vide Chancery, (4 D. 1, 11, 20.——4 P.)

SCANDALUM MAGNATUM.

Vice Action upon the Caſe for Defamation, (B. 1, &c.)—*Libel*, (C. 4.)

SCAVENGERS.

[A Scavenger's Rate cannot be made by one Liberty of a Pariſh, where none of the Churchwardens or Overſeers reſide. *Rex* v. *Saint Leonard Shoreditch*, T. 11 G. *Fort.* 324. *Str.* 630.]

[New Pariſh cannot make Scavenger's Rate, but continues contributable to the old Pariſh till a perpetual Diviſion is made as to the other Rates. *Rex* v. *Saint John Clerkenwell*, T. 11 G. *Fort.* 324.]

[Order to appoint Scavengers, muſt ſet out that they are able Perſons, or it is bad. *Rex* v. *Juſtices of Middleſex*, M. 11 G. 2. *Andr.* 72.]

[Quarter-Seſſions have no Power on Appeal to make a new Scavenger's Rate, tho' they may quaſh the Rate appealed from. *Rex* v. *Saint Andrew's Holbourn*, H. 4 G. 3. 3 B. M. 1458.]

SCIENTER.

Vide Action on the Caſe for Deceipt, (F. 3.)

SCIRE FACIAS.

Vide Bail, (R. 1, &c.)——*Diſmes*, (M. 8.)——*Execution*, (A. 4.)——I. 4.)——*Fine*, (E. 15.)——*Officer*, (K. 4.)——*Patent*, (F. 4, &c.)——*Pleader*, (3 B. 17.——3 L. 1, &c.)——*Prærogative*, (D. 69.)

SCHOOLS AND SCHOOLMASTER.

——*Vide Univerſity*, (D.)——*Uſes*, (N. 3.)

SCOTLAND.

(A) Scotland; The Antiquity of it.

SCOTLAND is another Kingdom of itſelf, diſtinct from the Kingdom of *England*. *Pl. Com.* 376. *a.*

(B) Berwick.

BERWICK was antiently Part of *Scotland*.

And tho' it was annexed to *England* in the Time of *Ed.* 4. yet it ſhall be governed by the Laws of *Scotland* and the Cuſtoms there. 1 *Sid.* 382.

And therefore a Fine or Ejectment cannot be in the Courts of *Weſtminſter* for Land in *Berwick*. 1 *Sid.* 382.

[*Berwick* has no criminal Law but the Law of *England*, nor Juriſdiction in criminal Matters, but with ſuch Reference to it as includes *B. R.*]

[*Venire* does not run there, becauſe they are exempted from being ſummoned out of the Borough to ſerve on Juries.]

[Original Writs do not run there.]

[Other Writs, miniſterially directed, do.]

[Writs not miniſterially directed, *Mandamus*, Prohibition, *Habeas Corpus*, *Certiorari* run there.]

[In-

[Informations may be granted by *B. R.* or filed by Attorney-general.]

[Where *B. R.* has Juriſdiction of the Matter, and it cannot be tried in the Place, it ſhall be tried as near as may be; thus, with regard to *Berwick*, it ſhall be tried in *Northumberland*, and that on a Suggeſtion, that *Venire* does not run there, and they are exempted from ſerving Juries out of the Borough.]

[All Rules of Common Law that hold as to *Wales*, conclude *a Fortiori* to *Berwick*.]

[Before the Union, *Berwick* was bound by *Engliſh* general Acts of Parliament, without being named, which, when done, is ſuperfluous; it is now bound by all general Laws. *Rex* v. *Cowle*, *T.* 32 & 33 *G.* 2. 2 *B. M.* 834.]

(C) How dependent upon England.

BUT *Scotland* was held of the King of *England*. *Pl. Com.* 368. *b.*

And is within the Fee and Seigniory of the King of *England*. *Ibid.*

Yet *Scotland* is a diſtinct Kingdom.

And therefore, a Fine and Non-claim do not bar him, who was in *Scotland*. *Pl. Com.* 376. *a.*

(D. 1.) How united to it.

BY the *St.* 1 *Jac.* 1. The Parliament congratulates the famous Union, or rather re-uniting of two mighty famous and antient Kingdoms (yet antiently but one) under one Imperial Crown, *&c.*

By the *St.* 1 *Jac.* 1. 2. Commiſſioners were appointed to treat with Commiſſioners to be appointed by the Parliament of *Scotland* for a further Union between the ſaid Kingdoms of *England* and *Scotland*.

By the *St.* 3 *Jac.* 1. 3. The Effect and Reſult of ſuch Treaty was prolonged from being laid before the Houſes of Parliament till ſome ſubſequent Seſſion of the ſame Parliament.

And in Purſuance of the ſame Treaty by the *St.* 4 *Jac.* 1. The Hoſtile Laws made in either of the Kingdoms were to be repealed, and Regulations were made for Trial of Offenders in each Kingdom.

By the *St.* 22 *Car.* 2. 9. The King was impowered to nominate Commiſſioners to treat of an Union of both Kingdoms.

By the *St.* 3 & 4 *Ann.* 7. Commiſſioners, to be appointed by her Majeſty, may meet Commiſſioners to be appointed by the Parliament of *Scotland* to treat of an Union of both Kingdoms, and ſuch other Matters as they ſhall think convenient for the Common Good of both, who ſhall reduce their Proceedings into Writing, to be laid before the Queen, and the Parliaments of *England* and *Scotland*, *&c.*

22 *July*, 5 *Ann.* The Commiſſioners of both Kingdoms agreed on twenty-five Articles of Union.

By the *St.* 5 *Ann.* 8. Reciting the ſaid Articles, which, with ſome Additions and Explanations, had been confirmed by Statute in *Scotland*, 16 *January*, 5 *Ann*; and reciting an Act paſſed in *Scotland* for ſecuring the Proteſtant Religion and Preſbyterian Church Government, and an Act in *England*, 5 *Ann.* 5. for ſecuring the Church of *England*, as by Law eſtabliſhed, the ſaid Articles as confirmed by the Parliament of *Scotland*, and the ſaid two Acts are enacted to be the complete and intire Union of the ſaid two Kingdoms of *England* and *Scotland*: And by the ſaid Statute an Act paſſed in *Scotland* for ſettling the Manner of Electing ſixteen Peers and forty-five Members for the repreſenting *Scotland* in the Parliament of *Great Britain*, is declared to be as valid, as if it had been Part of the Articles of Union.

(D. 2.) The Effects of the Union.

(D. 2.) In reſpect of the Crown.

BY *Art.* 1. On *1ſt May*, 1707, and for ever after, the two Kingdoms of *England* and *Scotland* ſhall be united into one Kingdom by the Name of *Great Britain*.

The Enſigns, Armorial, ſhall be as the Queen appoints, and the Croſſes of *St. Andrew* and *St. George* conjoined and uſed in all Flags, Banners, *&c.* at Sea and Land.

By *Art.* 24. There ſhall be One Great Seal for the United Kingdom, different from that of either Kingdom, but the Quartering the Arms and Precedency of *Lyon* King of Arms ſhall be left to her Majeſty.

Such Great Seal ſhall be uſed for Writs of Election, Treaties, Orders of State, *&c.* which concern the whole Kingdom or *England*, and the Seal in *Scotland* ſhall be for the private Rights and Grants of *Scotland*.

By *Art.* 2. The Succeſſion to the Monarchy of the United Kingdom ſhall be as ſettled by the *St.* 12 *W.* 3. 2. for Want of Iſſue of her Majeſty, to the Princeſs *Sophia* and the Heirs of her Body, being Proteſtants, *&c.*

And all Papiſts, or marrying Papiſts, ſhall be excluded, as by the *St.* 1 *W. & M. Seſſ.* 2. *c.* 2.

By *Art.* 16. The Coin ſhall be of the ſame Standard and Value thro' the United Kingdom, as now in *England*.

By *Art.* 24. Privy Seal, Signet, Caſſet, Signet of Juſticiary Court, Quarter Seals and Seals of Court, now uſed, ſhall be continued, ſubject to the Regulations of Parliament.

And the Crown, Sceptre, Sword of State, and all Records, *&c.* publick or private, ſhall be kept in *Scotland*, *&c.*

(D. 3.) Of Religion.

By the *St.* 16 *January*, 5 *Ann.* in *Scotland*, *confirmed by the St.* 5 *Ann.* 8. *and declared to be a fundamental and eſſential Part of the Union*, the true Proteſtant Religion, and the Worſhip, Diſcipline, and Government of the Church of *Scotland* is eſtabliſhed to continue without any Alteration for ever, eſpecially the 5*th* Act, 1 *W. & M.* ratifying the Confeſſion of Faith, and ſettling the Preſbyterian Church Government, and all other Acts relating thereto in Proſecution of the Claim of Right, 11 *April*, 1689.

And the true Proteſtant Religion contained in the ſaid Confeſſion of Faith, with the Form and Purity of Worſhip preſently in Uſe in the ſaid Church, and it's Preſbyterian Church Government and Diſcipline, *viz.* the Government of the Church by Kirk Seſſions, Preſbyteries, Provincial Synods, and General Aſſemblies, all eſtabliſhed by the ſaid Acts purſuant to the Claim of Right, ſhall continue unalterable: And the ſaid Preſbyterian Government ſhall be the only Government of the Church in the ſaid Kingdom of *Scotland*.

And the Univerſities and Colleges of *St. Andrews*, *Glaſgow*, *Aberdeen*, and *Edinburgh*, as now eſtabliſhed by Law, ſhall continue for ever: And no Profeſſors, Principals, *&c.* or others bearing Office in any Univerſity, College, or School, ſhall be capable, *&c.* but ſuch as own the Civil Government, and before their Admiſſion profeſs and ſubſcribe the ſaid Confeſſion, and conform to the Worſhip preſently in Uſe, and ſubmit to the Government and Diſcipline thereof, and never endeavour the Subverſion or Prejudice thereof directly or indirectly, *&c.*

And no Subject, *&c.* ſhall be liable to any Oath, *Teſt*, or Subſcription contrary to the ſaid true Proteſtant Religion, Church Government, Worſhip, or Diſcipline: And the Succeſſor to the Crown ſhall ſwear to maintain, *&c.* the ſame inviolably.

(D. 4.) Parliament.

(D. 4.) Election of Peers.

By *Art.* 3. The United Kingdom of *Great Britain* ſhall be repreſented by One and the ſame Parliament.

By *Art.* 22. Of the Peers of *Scotland*, Sixteen ſhall be the Number to ſit in the Houſe of Lords: And upon her Majeſty's Pleaſure to hold any Parliament of *Great Britain*, till further Proviſion by the Parliament of *Great Britain*, a Writ ſhall iſſue to the Privy Council of *Scotland*, under the Great Seal, to cauſe ſixteen Peers to be ſummoned, and forty-five Members, *&c.* elected, *&c.* And the Names of the Perſons ſo ſummoned and elected ſhall be returned by the ſaid Privy Council into the Court from whence the Writ iſſued.

By the *St.* 6 *Ann.* 23. The Proclamation ſhall be under the Great Seal of *Great Britain*, commanding all Peers to meet, *&c.* and ſuch Proclamation ſhall be publiſhed at *Edinburgh*, and all the County Towns in *Scotland*, twenty-five Days before the Time of Meeting.

By the *St.* in *Scotland*, 5 *Feb.* 1707, the ſaid Writ ſhall contain a Warrant to the Privy Council, requiring them to iſſue a Proclamation to the Peers of *Scotland* to meet at ſuch Time and Place in *Scotland*, as her Majeſty thinks fit, to elect the ſaid ſixteen Peers, and requiring the Lord Clerk-Regiſter, or two of the Clerks of Seſſion, to attend and adminiſter the Oaths required, and aſk the Votes, and, having made up the Liſts in the Preſence of the Meeting, to return the Names of the ſixteen Peers choſen (under the Subſcription of the Lord Clerk-Regiſter, Clerk, or Clerks attending) to the Clerk of the Privy Council.

And *by the ſame Statute*, the ſaid ſixteen Peers ſhall be named by the Peers of *Scotland* out of their own Number by open Election and Plurality of Voices of Peers preſent and Proxies for the abſent (the ſaid Proxies being Peers, and producing a Mandate ſigned before Witneſſes, and both Conſtituent and Proxy being qualified by Law.)

And ſuch abſent Peers may ſend Liſts of the Peers by them thought fit validly ſigned, *&c.* which ſhall be reckoned as if they had been preſent and given in ſuch Liſt.

In Caſe of Death of any ſuch Peer, *&c.* they ſhall nominate another in like Manner.

By *Art.* 23. the ſaid ſixteen Peers ſhall have all Privileges of Parliament, as Peers of *England* have, or ſhall have, particularly the Right of Sitting on Trials of Peers during the Being, or in the Intervals, of Parliament.

By the *St.* 6 *Ann.* 23. Peers of *Scotland*, before qualified to elect the ſixteen Peers, ſhall take the Oaths and ſubſcribe the Declaration, *&c.* And if abſent, there ſhall be a Certificate thereof, *&c.*

Peers, who are alſo of *England*, ſhall ſign their Proxies and Liſts, as Peers of *Scotland*; and no Peer ſhall be capable of more than two Proxies at a Time.

After the Election, the Lord Clerk-Regiſter, *&c.* ſhall certify the Names of the ſixteen Peers elected to the *Chancery* of *Great Britain*.

(D. 5.) Of the Commons.

So by *Art.* 22. The Repreſentatives of *Scotland* in the Houſe of Commons of Parliament in *Great Britain* ſhall be Forty-five.

And by the *St. in Scotland*, 5 *Feb.* 1707. On Writ to the Privy Council, *&c.* they ſhall iſſue a Proclamation *ut ſupra*, requiring alſo the Freeholders, for the reſpective Shires and Stewarties, to elect their Commiſſioners, and *Edinburgh* and the other Royal Burghs to elect the Commiſſioners to be ſent to the ſeveral Diſtricts, *&c.*

But by the *St.* 6 *Ann.* 6. There ſhall be a Writ to the Sheriff, *&c.* who ſhall make his Precept to the Borough of *Edinburgh*, and the other Burghs, *&c.*

And by the Statute in *Scotland*, 5 *Feb.* 1707. Of the forty-five Repreſentatives of the Commons, thirty ſhall be choſen by the Shires and Stewarties, each one, (except *Cathneſs*, which ſhall chuſe by Turn with *Bute*, *Cromarty* with *Nairn*,

Nairn, *Kinroſs* with *Clackmanan*) and fifteen for the Royal Boroughs, *viz.* *Edinburgh* one, and the Reſt ſhall be divided into fourteen Claſſes or Diſtricts, and each Burgh chuſing a Commiſſioner, thoſe Commiſſioners ſhall elect one for each Diſtrict, *&c.*

If the Votes of the Commiſſioners in any Diſtrict be equal, the Preſiding Commiſſioner (for the Burghs ſhall preſide by Turns in every Diſtrict) ſhall have the Caſting Vote, *&c.*

On Death or Vacancy the ſame Shire or Diſtrict ſhall chuſe another in the ſame Manner, *&c.*

None ſhall be capable to elect or be elected, unleſs he be of the Age of twenty-one Years complete, and a Proteſtant, and, if required, ſubſcribe and ſwear the *Formula* in the third Act of the *8th and 9th Seſſion* of *W.* 3. intitled, *An Act to prevent the Growth of Popery.*

Nor unleſs now by the Laws of this Kingdom capable to elect or be elected, a Commiſſioner to the Parliament of *Scotland.*

By *Art.* 22. Every Peer and Member ſhall take the Oaths appointed by the *St.* 1 *W. & M. ſeſſ.* 1. *c.* 8. and 1 *Ann. St.* 1. *c.* 22. and ſubſcribe the Declaration by the *St.* 30 *Car.* 2. *St.* 2 in the ſame Manner and under the ſame Penalties, as Members of both Houſes of Parliament in *England.*

By the *St.* 6 *Ann.* 23. Voter, before the Election of Burgeſs or Commiſſioner, *&c.* ſhall, if required, take the Oaths, or, if a Quaker, the Affirmation.

(D. 6.) Peerage, *&c.*

By *Art.* 23. All Peers of *Scotland* ſhall be Peers of *Great Britain*, and have Precedency next after Peers of like Degrees in *England*, and before all of like Degrees after to be created, and ſhall be tried as Peers, and enjoy all the Privileges of Peers, except that of Sitting in the Houſe of Lords, and the Privileges depending thereon, and particularly the Right of Sitting on the Trials of Peers.

By the *St.* 6 *Ann.* 23. For the Trial of a Peer for Treaſon or Felony, a Commiſſion ſhall go to the Juſtices to inquire by Oaths, *&c.* of all Treaſons, Felonies, *&c.* committed in ſuch County by the Peer, *&c.* who ſhall take Inquiſition in the ſame Manner, which ſhall be of the ſame Effect, and proceeded on in the like Method, as an Indictment before Juſtices of *Oyer* and *Terminer* for the like Offence.

By *Art.* 20. All Offices, Juriſdictions, *&c.* heretable, or for Life, ſhall be reſerved to the Owners as Rights of Property.

By *Art.* 21. The Rights and Privileges of the Royal Burghs ſhall remain intire after the Union.

By *Art.* 19. The Privy Council in *Scotland* was to continue till the Parliament eſtabliſhed a more effectual Method, *&c.*

By the *St.* 6 *Ann.* 6. The Queen ſhall have but one Privy Council for *Great Britain*, *&c.* but Juſtices of Peace ſhall be for every Shire, Stewarty, and ſuch Cities, Burghs, *&c.* as the Queen thinks fit, who ſhall have the ſame Power as to Peace, as by the Laws of *Scotland* Juſtices of Peace had, or have by the Laws of *England.*

(D. 7.) Trade.

By *Art.* 4. All Subjects of the United Kingdom ſhall have full Freedom and Intercourſe of Trade and Navigation to and from any Place in the ſame Kingdom and the Dominions belonging thereto.

And there ſhall be a Communication of all other Rights and Privileges, which belong to Subjects of either Kingdom, *&c.*

By *Art.* 5. All Ships, *&c.* of Subjects of *Scotland*, at the Union, tho' foreign built, ſhall be deemed of the Built of *England.*

By *Art.* 6. All Parts of the United Kingdom ſhall be under the ſame Prohibitions, Reſtrictions, and Regulations of Trade, have the ſame Allowances, Encouragements, and Drawbacks, and be liable to the ſame Cuſtoms and Duties

on Import and Export: And the Prohibitions, &c. Allowances, &c. and Cuſtoms, &c. ſettled in *England* at the Union, ſhall after take Place thro' the whole United Kingdom, except the Duties on Export and Import of Particular Commodities, from which any Subjects of either Kingdom are exempt by their private Rights, which ſhall remain intire, &c.

No *Scotch* Cattle carried into *England* ſhall be liable to other Duties than the Cattle of *England* are.

When Oats are at 15 *s. Sterling per* Quarter, or under, 2 *s.* 6 *d. per* Quarter ſhall be paid for Oat-meal exported, as long as Rewards are allowed for the Exportation of other Grain, and the Beer of *Scotland* ſhall have the ſame Reward as Barley.

And the Prohibition in *Scotland* of Importation of Victuals from *Ireland*, or other Place beyond Sea, ſhall remain, till more effectual Proviſion againſt ſuch Importation.

By *Art.* 8. Foreign Salt imported in *Scotland* ſhall be charged with the ſame Duties as in *England*, and ſo ſhall Salt made in *Scotland*, if uſed for Fleſh exported, or Proviſions of Ships, &c.

And the Laws in *Scotland* for curing, &c. Herring, White-fiſh, and Salmon with foreign Salt only, &c. ſhall be continued, ſubject to Alterations by the Parliament of *Great Britain*, and Fiſh ſo cured, &c. exported from *Scotland*, ſhall have the ſame Premiums and Drawbacks as from *England*.

And there ſhall be allowed 10 *s.* 5 *d. per* Barrel for White Herring, and 5 *s. per* Barrel for Beef and Pork, ſalted with foreign Salt, exported from *Scotland* beyond Sea.

By *Art.* 17. The ſame Weights and Meaſures ſhall be uſed thro' the United Kingdom as now in *England*, and Standards ſhall be ſent from thoſe kept at the *Exchequer* at *Weſtminſter* to be kept by thoſe Burghs in *Scotland*, which have now of Right the Keeping of ſuch Standards, ſubject to Regulations by Parliament.

(D. 8.) Taxes.

By *Art.* 7. All Parts of the United Kingdom ſhall be for ever liable to the ſame Exciſes on all exciſeable Liquors, except that 34 Gallons Barrel of Beer and Ale *Engliſh*, being 12 Gallons *Scots* preſent Meaſure, ſhall pay but 2 *s.* on the Accompt of the preſent Exciſe, which after the Union ſhall take Place on all other Liquors as ſettled in *England*.

But by *Art.* 9. When the Land Tax in *England* is 1,997,763 *l.* 8 *s.* 4 *d.*; *Scotland's Quota* ſhall be 48,000 *l.* free of all Charges, and ſo proportionably, to be collected as the *Ceſs* now in *Scotland*.

And by *Art.* 8. *Scotland* ſhall be exempt from the Duty on Home-made Salt for ſeven Years, and after from the Duty by the 9 & 10 *W.* 3. of 2 *s.* 4 *d. per* Buſhel, but ſhall pay if imported into *England*. *

* *Vide* 3 Geo. 2. *ch.* 20. *ſect.* 3.

So by *Art.* 10. from Duties on ſtampt Paper, Vellum and Parchment, by the Acts then in Force.

By *Art.* 11. from Duties on Windows and Lights, which determine 1 *Auguſt* 1710.

By *Art.* 12. from Duties on Coals, Culm, and Cinders uſed in *Scotland* till 3 *September* 1710.

By *Art.* 13. from Duty on Malt till 24 *June* 1707; and by *Art.* 14. during the preſent War.

By *Art.* 14. from all other Duties laid on before the Union, except thoſe conſented to in this Treaty.

So by *Art.* 15. *Scotland* ſhall have 398,085 *l.* 10 *s.* as an Equivalent for the Cuſtoms and Exciſes, with which *Scotland* after the Union will be liable towards the Debts of *England* (the Cuſtoms of *Scotland* being 30,000 *l. per Annum*, and thoſe of *England* 1,341,559 *l. per Annum*, the Exciſes in *Scotland* 33,500 *l. per Annum*, and thoſe in *England* 947,602 *l. per Annum*) to be applied, &c.

(D. 9.) Laws.

By *Art.* 25. All Laws and Statutes in either Kingdom, ſo far as they are inconſiſtent with any Article of the Union, ſhall ceaſe and be void.

By *Art.* 18. Laws about the Regulation of Trade, Cuſtoms and Exciſes, to which *Scotland* is liable, ſhall be the ſame in *Scotland* as in *England*.

But *by the ſame Art.* All Laws in *Scotland*, not inconſiſtent with the Treaty of Union, ſhall remain in the ſame Force as before, but alterable by the Parliament of *Great Britain*.

And the Laws, which concern publick Right, Policy, and Civil Government, may be made the ſame through the United Kingdom, but no Alteration ſhall be in Laws, which concern private Right, except for Evident Utility of the Subjects of *Scotland*.

[If Money is left in Truſt to be laid out in Lands in *England* for *A.* &c. and by Act of Parliament it is ſecured on *A.*'s Eſtate in *Scotland* during his Minority, it is to be conſidered as an Eſtate in *England*. *Marquis of Annandale* v. *Marchioneſs of Annandale*, *T.* 1751. 2 *Vezey* 381.]

[The Purchaſe-money for heritable Juriſdictions, whilſt remaining in the Exchequer in *England*, conſidered as real Eſtate in *Scotland*. *Ibid.*]

By *Stat.* 13 *G.* 3. *c.* 31. Perſons againſt whom Warrants are iſſued by Juſtices in *England* for Offences, who ſhall eſcape into *Scotland*, may be ſent back by *Scotch* Juſtice to the County where Offence committed; and ſo, *vice verſa*, from *England* to *Scotland*.]

[Perſon ſtealing in *Scotland* may be tried where he is found with the Goods in *England*, and *vice verſa*: and ſo, Receivers of ſtolen Goods.]

(D. 10.) Courts.

(D. 10.) Court of Seſſions.

By *Art.* 19. The Court of Seſſion, or College of Juſtice ſhall remain in all Time coming in *Scotland*, as now conſtituted, and with the ſame Authority and Privileges, ſubject to ſuch Regulations for the better Adminiſtration of Juſtice, as ſhall be made by the Parliament of *Great Britain*.

None ſhall be named ordinary Lords of Seſſion, but thoſe, who have ſerved five Years in the College of Juſtice, as Advocates or Principal Clerks of Seſſion, or ten Years, as Writer to the Signet, &c. ſo as the Qualification for ordinary Lords of Seſſion may be altered by Parliament.

By the *St.* 6 *Ann.* 6. Circuit Courts ſhall be twice a Year, as by the *St.* in *2d Seſſ. Car.* 2. 3.

(D. 11.) Of Juſticiary.

So by *Art.* 19. The Court of Juſticiary ſhall remain in all Time, &c. ſubject to Regulations, &c. without Prejudice to other Rights of Juſticiary.

(D. 12.) Of Admiralty.

By *Art.* 19. All Admiralty Juriſdictions ſhall be under the Lord Admiral or Commiſſioners of Admiralty in *Great Britain*.

But the Court of Admiralty now in *Scotland* ſhall be continued, and all Reviews, Reductions, or Suſpenſions of Sentences in *Maritime* Cauſes, till the Parliament of *Great Britain* make Regulations as expedient for the whole United Kingdom, ſo as in *Scotland* be always a Court of Admiralty for determining all *Maritime* Cauſes relating to private Rights in *Scotland*.

And the Heretable Rights of Admiralty and Vice-Admiralty in *Scotland* ſhall be reſerved to the Proprietors as Rights of Property, ſubject, in the Manner of exerciſing, to the Regulations of Parliament.

(D. 13.) Other Courts.

By *Art.* 19. All other Courts in *Scotland* ſhall remain, ſubject to Alterations by Parliament.

And all Inferior Courts there remain ſubordinate, as now, to the Supreme Courts of Juſtice there; and no Cauſes in *Scotland* ſhall be cognoſcible in *Chancery*, *B. R. C. B.* or other Court in *Weſtminſter-Hall*, nor ſhall they or any Court

Court of the like Nature have Power to review the Sentences, &c. in *Scotland*, or ſtop the Execution of the ſame.

By *Art.* 19. The Court of *Exchequer* ſhall be in *Scotland*, having the ſame Power as in *England* for deciding Queſtions about the Revenues of Cuſtoms and Exciſes there. (D. 14.) Exchequer.

And ſhall have the ſame Power as the preſent Court of *Exchequer* in *Scotland* of paſſing Signatures, Gifts, Tutories, &c.

By the *St.* 6 *Ann.* 26. (till which by *Art.* 19. the *Exchequer* before in *Scotland* continued) a Court of *Exchequer* was erected in *Scotland*.

[Whether the Court of Exchequer has the excluſive Juriſdiction concerning the Revenue ariſing there, (as on a Bond to pay Duties)? *Q. Attorney-general v. Lutwydge*, *H.* 1729. *Bunb.* 280.]

SEA.

Vide Admiralty per Totum.——*Navigation*, (A. B.)——*Prærogative*, (B. 1.)

SEAL.

Vide Fait, (A. 2.—F. 2.)—*Proceſs*, (A. 3.)

The King's Seals.

Vide Juſtices, (K. 6.)—*Patent*, (C. 1, &c.)

SEARCH AND SEIZURE OF FORFEITED GOODS.

Vide Trade, (C. 6.)

SEAT IN A CHURCH.

Vide Action on the Caſe for a Diſturbance, (A. 3.)—*Eſgliſe*, (G. 3.)

SECRETARY OF STATE.

Vide Officer, (E. 8.)

SECTA AD MOLENDINUM.

Vide Droit, (H.)

SE DEFENDENDO.

Vide Juſtices, (M. 18.)

SEIGNIORY.

(A) Seigniory, What shall be: How created; In Capite.

SEIGNIORY imports the Dominion or Royalty, which any one has. And it is a Seigniory in Groſs, where the Dominion is founded in his Perſon: As, where a Man holds of the King *in Capite*, or of a common Perſon in Groſs. *Co. L.* 108. *a.* 12 *Co.* 136, *Hob.* 90.

Or, when he has a Royalty in Reſpect of an Honour, Manor, *&c.* of which *Vide Honour*.

If the King creates a Tenure of himſelf, without ſaying, of any Manor, Caſtle, Honour, *&c.* it will be a Tenure *in Capite*, for he holds of him as of his Crown. *Co. L.* 108. *a.* 12 *Co.* 135. *Sav.* 45.

Tho' the Tenure be in *Socage*, and not in *Chivalry*. *Co. L.* 108. *a.*

But where a Subject creates the Tenure, tho' the Seigniory afterwards eſcheats, *&c.* to the King, it will be a Tenure of the Perſon of the King, but not *in Capite*. *Ibid.*

So, if the Tenure be created by the King *ut de Manerio, &c. in Capite*, the Tenure will be of the Manor, and the Words, *in Capite*, ſhall be rejected. *R.* 12 *Co.* 136.

The King is Lord Paramount of all the Lands in the Kingdom. 2 *Inſt.* 501. *Vide Homage.*

So before the *St. W.* 3. 18 *Ed.* 1. 1. *Quia Emptores Terrarum*, if a Subject had enfeoffed, *&c.* another to hold of himſelf by ſuch Services as he pleaſes, it was a *meſne* Seigniory in the Feoffor. 2 *Inſt.* 501.

And, if he had enfeoffed another, generally, without Mention of any Tenure, the Feoffee held of him by the ſame Services, by which he held. 2 *Inſt.* 501.

So, ſince the *St. Quia Emptores*, If a Tenant makes a Gift in Tail, the Donee holds of the Donor. 4 *H.* 6. 20.

Tho' the Gift be *tenend' de Capitali Domino*; for theſe Words ſhall be rejected. *R.* 4 *H.* 6. 20, 21.

If the Tenant had enfeoffed another only of Part of his Tenement, he muſt hold of his Feoffor; for the Seigniory cannot be divided by the Act of the Tenant, and therefore there could not be a Feoffment of Parcel to hold of the Lord Paramount. 2 *Inſt.* 65.

Yet before the *St. Quia Emptores*, the Tenant might enfeoff another of the Whole, to hold of the Lord Paramount. 2 *Inſt.* 65.

But, by the *St. Quia Emptores Terrarum*, If any enfeoff another of his Tenements, or any Part of them, the Feoffee ſhall hold of the Lord Paramount by the ſame Services by which his Feoffor held, or *pro Rata*, if the Feoffment be only of Part. 2 *Inſt.* 501.

The Tenure ſhall be of the next Lord Paramount. *Ibid.*

And by the ſame Services, by which the Feoffor ought to hold, if he was ſeiſed of the Fee, or in his own Right. 2 *Inſt.* 502.

Or (if it cannot be by the ſame, as where the Feoffor holds in *Frankalmoigne*) as near as it can. 2 *Inſt.* 502.

(B) How Extinguiſhed.

BUT, if the Tenant enfeoffs the King, the Seigniory is extinct; for the King cannot hold of any Perſon. *Dy.* 10. *a.*

So, if he gives to *A.* in Tail, the Remainder to the King in Fee, if the King accepts the Remainder. *R. Dy.* 154. *b.*

So, if Tenant *paravail* enfeoffs the Lord *Paramount*, the *Meſnalty* will be extinct, for the Load Paramount cannot hold of any Perſon more baſe. *Dy.* 10. *a.*

So,

So, if a Tenancy descends to the King and another, the King may compel the other to do the intire Service, or not, at his Election. *R. Dy.* 285. *b.*

But, if the King afterwards enfeoffs another *tenend' de Capitali Domino per Servitia debita*, the *Mesnalty* and Seigniory *Paramount* are revived. 2 *Inst.* 501.

So, if the Lord releases the Seigniory to the Tenant, or releases the Land, the Seigniory is extinct. *Lit. S.* 454.

So, if the Lord *Paramount* confirms the Estate of the *Mesne*, to hold by *Socage*, or a less Service, the Tenant *paravail*, who holds by the same Services, after such Confirmation shall hold by *Socage*, &c. 2 *Inst.* 501.

Vide more concerning *Seigniory* in *Grant*, (E. 4.)

SEISED TO USES.

Vide Uses, (E.—F.)

SEISIN.

(A) Seisin in Fact.

(A. 1.) When necessary.

SEISIN imports the having Possession of an Estate of Freehold, or Inheritance, in Lands or Tenements *Co. L.* 153. *a.*

Seisin is in Fact, or in Law. *Co. L.* 29. *a.*

Seisin in Fact is necessary to make a Man Tenant by the Curtesy, where it was attainable. *Co. L.* 29. *a.* *Vide Estates*, (D. 1.)

And to maintain an Assise. 4 *Co.* 9. *a.* *Vide Post*, (C.)

Or a Writ of Right. 4 *Co.* 9. *a.*

So a Writ of *Aiel*, *Mortd'ancestor*, &c. 4 *Co.* 10. *a.*

And therefore where the *St.* 32 *H.* 8. 2. speaks of Seisin within 60 Years for a Writ of Right, 50 Years for a Writ of *Aiel*, *Cosinage*, *Mortd'ancestor*, Entry, &c. within 30 Years for an *Assise*, it shall be intended of an actual Seisin. 4 *Co.* 10. *a.*

(A. 2.) What shall be a Seisin in Fact.

A Seisin in Fact shall be attained by an actual Entry into Lands or Tenements.

By an Entry into Part in the Name of the Whole.

So a Receipt of Rents or Profits will give an actual Seisin.

So, if an Heir demises for Years, or at Will, the Entry of the Lessee gives an actual Seisin to the Lessor. *Vide Assise*, (B. 4.)

So a Recovery and Execution thereon give an actual Seisin. *Vide Post*, (C.)

[*A.* dies seised of four Houses leaving Daughters by his first Wife, and his second Wife *ensient* with a Son who is born, lives five Weeks and dies, the Mother, the Daughters and the Son live in one of the Houses, the Tenants of the other Houses pay Rent to the Mother before the Birth, during the Life, and after the Death of the Son. This is actual Seisin in the Son, and the Premisses descend to his Heir. *Goodtitle* v. *Newman*, *H.* 14 *G.* 3. 3 *Wilf.* 516.]

(B) Seiſin in Law.

When ſufficient.

A Seiſin in Law is ſufficient for an Avowry upon a Diſtreſs. 4 *Co.* 9. *a.* *Vide Poſt*, (E.)

(C) What Seiſin is ſufficient to maintain an Aſſiſe.

THE Plaintiff in an Aſſiſe muſt have actual Seiſin of the Lands or Tenements, for which he brings his Aſſiſe, for it does not lie of a Seiſin in Law. *Lit. S.* 681. 4 *Co.* 9. *a.*

What ſhall be an actual Seiſin. *Vide Ante*, (A. 2.)

And therefore, if the Plaintiff in an Aſſiſe enters, or takes the Profits of the Land, that is ſufficient for him to have an Aſſiſe.

So, if a Man receives Rent, that is a ſufficient Seiſin to have an Aſſiſe of the Rent.

So, if a Man recovers Rent, and the Sheriff upon a Writ of Execution puts him in Seiſin of the Rent.

Tho' he puts him in Seiſin only by *Parol* upon the Land. 2 *Rol.* 463. *l.* 40.

Or by Delivery of an Ox, or other collateral Thing in the Name of Seiſin. 2 *Rol.* 464. *l.* 30. 463. *l.* 30, 32.

So, if he has Judgment for a Return irrepleviſable. 4 *Co.* 9. *b.* 2 *Rol.* 464. *l.* 12.

So, if the Tenant upon a Grant of Rent attorns to the Grantee, and gives him Money, as Parcel of the Rent, that will be a ſufficient Seiſin. 2 *Rol.* 463. *l.* 22.

So, if he gives a Penny, &c. by Way of Seiſin, tho' it be not given, as Parcel of the Rent. 2 *Rol.* 463. *l.* 25. 4 *Co.* 10. *a.*

Or gives an Ox, Cow, or other collateral Thing in the Name of Seiſin. 2 *Rol.* 463. *l.* 27. 464. *l.* 25.

So, if a Man takes the Profits of an Office, that is a ſufficient Seiſin of the Office, to maintain an Aſſiſe.

So, if he takes 3*d.* of *A.* for a *Capias*, it is a ſufficient Seiſin of the Office of Philazer. 1 *Rol.* 270. *l.* 25.

So, if he takes 20*s.* of *A.* by Way of Compoſition for the Fees of an Office. *R.* 2 *Lev.* 120.

Tho' the Defendant had Poſſeſſion of the Office at the ſame Time. 2 *Lev.* 120.

So, if he puts his Hand upon the Mace, which the Diſſeiſor of the Office holds, and his Hand upon the Door of the Houſe of Commons, it is a ſufficient Seiſin of the Office of Serjeant of the Houſe of Commons. *R.* 2 *Lev.* 120.

So, if he recovers Damages in an Action upon the Caſe for his Fees. *Dub.* 2 *Lev.* 108.

So Seiſin of Part of the Rent is Seiſin ſufficient to have an Aſſiſe of the Whole. 4 *Co.* 9. 2 *Rol.* 463. *l.* 50.

So, if a Man grants ſeveral Rents, an Attornment by Delivery of a Penny in the Name of Seiſin is ſufficient for all the Rents. 2 *Rol.* 463. *l.* 35. 4 *Co.* 8. *b.* 9. *b.*

So, if a Man reſerves upon a Leaſe for Life, or Years, a Quartern of Corn for the firſt Year, and afterwards 50*s.* *per Annum*, the Seiſin of the Corn is ſufficient for the 50*s.* Rent; for the Whole ſtands upon the ſame Reſervation. 4 *Co.* 9. *a.*

So Seiſin by the Anceſtor is ſufficient in an Aſſiſe by the Heir. *Vide Aſſiſe*, (A.)

So, in an Aſſiſe of Rent by a Corporation Sole, Seiſin by his Predeceſſor. 2 *Rol.* 464. *l.* 5. 40.

So Seiſin by the Hand of the Tenant paravail is ſufficient for the Lord *Paramount* againſt the *Meſne*. 1 *Rol.* 314. *l.* 47.

So Seiſin by the Huſband binds the Wife and her Heirs. 1 *Rol.* 314. *l.* 55.

So Seiſin by Tenant by the Curteſy binds the Heir. 1 *Rol.* 315. *l.* 2.

So Seiſin given of Services by *A.* after a Feoffment by him to *B.* and before Notice of the Feoffment, is ſufficient for the Lord in an Aſſiſe againſt *B.* for till Notice *A.* was his Tenant, as to the Avowry. 2 *Rol.* 464. *l.* 50.

So Seiſin by the Hand of the Diſcontinuee of Tenant in Tail, tho' the Lord cannot avow upon him, and there is no Privity between them. 2 *Rol.* 464. *l.* 32. 1 *Rol.* 314. *l.* 51.

So, by the Hand of a Diſſeiſor, or other, who has a defeaſible Title, if it be without *Covin*. 2 *Rol.* 464. *l.* 45. 1 *Rol.* 314. *l.* 50.

If a Man makes a Feoffment of a Seigniory upon Condition, and afterwards enters for the Condition broken; Seiſin of the Services before the Feoffment is ſufficient for an Aſſiſe after Re-Entry. 2 *Rol.* 465. *l.* 10. Where after Re-Entry he diſtrains. 4 *Co.* 9. *b.* *Vide Poſt*, (D.)

So Seiſin by the Feoffee before the Condition broken. 4 *Co.* 9. *b.*

If a Rent becomes Seck without the Act of the Party himſelf, Seiſin before is ſufficient for an Aſſiſe afterwards: As, if the Lord purchaſes, *&c.* of the Tenant *paravail*, whereby the Surpluſage of the Rent of the *Meſnalty* is Seck, Seiſin before of the Rent-Service is ſufficient for that which is Seck. 4 *Co.* 9. *a.*

(D) What not.

BUT a Seiſin in Law is not a ſufficient Seiſin to have an Aſſiſe. *Vide Ante*, (C.)

So an Attornment to the Grant of a Rent, without Payment of any Part, or ſomething given in the Name of Seiſin, is not ſufficient to maintain an Aſſiſe. 2 *Rol.* 463. *l.* 15. 464. *l.* 20.

Tho' he attorned by Delivery of a Penny, if it were not given as Part of Rent, or in the Name of Seiſin. 2 *Rol.* 463. *l.* 20.

So a Diſtreſs for a Rent-Seck, without more, is not a ſufficient Seiſin to have an Aſſiſe. 2 *Rol.* 463. *l.* 43.

So Seiſin of one Service is not ſufficient to have an Aſſiſe of another Service, tho' it be inferior to it. 4 *Co.* 9. *a.*

As, Seiſin of Fealty is not ſufficient to have an Aſſiſe for Rent. 2 *Rol.* 463. *l.* 52.

So, in an Aſſiſe for an Office, it is not ſufficient for a Seiſin, that he goes to the Place, where it ought to be exerciſed, and demands his Station there. 2 *Lev.* 108.

Nor, if he recovers Damages againſt another in an Action upon the Caſe for diſturbing him in the Exerciſe of the Office. *Semb.* 2 *Lev.* 108.

So Seiſin of Services, by the Hand of a Leſſee for Years, is not ſufficient for an Aſſiſe againſt him in the Reverſion, after the Years expired. 2 *Rol.* 465. *l.* 2. 1 *Rol.* 314. *l.* 45.

Or by the Hand of a Tenant at Will. 1 *Rol.* 314. *l.* 42.

So Seiſin of Rent-Service is not ſufficient for a Rent, which becomes *Seck* by the Act of the Party himſelf: As, if the Lord grants his Seigniory, ſaving the Rent, Seiſin of the Rent before is not ſufficient to have an Aſſiſe of the Rent, which is now *Seck*. 4 *Co.* 9. *b.*

So, if a Donor or Leſſor for Life grants the Reverſion, ſaving the Rent. *Ibid.*

So, if a Man makes a Feoffment of Land upon Condition, and afterwards the Condition is broken, he cannot maintain an Aſſiſe before Entry and a new Seiſin obtained. *Ibid.*

(E) What is ſufficient to make a Diſtreſs.

BUT a Seiſin in Law is ſufficient to have a Diſtreſs for Rent. 4 *Co.* 9. *a.* So it is ſufficient for an Avowry, *&c.* for Rent, or other Service, ſince the *St.* 32 *H.* 8. 2. tho' that Statute ſpeaks of actual Poſſeſſion within 40 Years; for that ſhall be reſtrained to Seiſin for an Action, and not for a Diſtreſs. *R.* 4 *Co.* 10.

And Seiſin of Homage is a ſufficient Seiſin to enable a Diſtreſs for all other Services, Superior or Inferior. *R.* 4 *Co.* 8. *b. Bevil.*

So Seiſin of any Superior is Seiſin of every Inferior Service: As, if a Man holds by *Eſcuage* and other Services, Seiſin of *Eſcuage* is Seiſin of Homage, Fealty, *&c.* *R.* 4 *Co.* 8. *b.*

So Seiſin of Homage is Seiſin of Fealty. 4 *Co.* 8. *b.*

And, if the Tenure be by Fealty and Rent, Seiſin of the Rent is Seiſin of the Fealty. *Ibid.*

And Seiſin of the Fealty is Seiſin of the Rent. *R.* 4 *Co.* 8. *b.*

So Acceptance by the Lord from his Tenant of an Horſe, *&c.* for Rent due, is Seiſin of the Rent. 1 *Rol.* 314. *l.* 25.

So, if the Tenant pays an Amerciament for not doing Suit, or makes a Compoſition for it, it is Seiſin of the Suit of Court. 1 *Rol.* 314. *l.* 20.

So an Attornment, or a Recovery in Avowry for any Service, is a ſufficient Seiſin of the Service. 1 *Rol.* 314. *l.* 17, 27.

So Seiſin of any Annual Service is Seiſin of all Caſual Services: As, Seiſin of Rent, Suit, *&c.* is Seiſin of *Eſcuage*, Homage, Fealty, Ward, Relief, Heriot-Service, Service to pale in the Park, or cover the Hall of the Lord, *&c.* 4 *Co.* 8. *b.*

But Seiſin of a Superior Service is not Seiſin of any Inferior, which is not incident. *Ibid.*

So Seiſin of any Annual Service is not Seiſin of any other Annual Service: As, Seiſin of Rent is not Seiſin of Suit, Work-Days annually, *&c.* 4 *Co.* 9. *a.*

(F) Diſſeiſin.

(F. 1.) What ſhall be.

[THE preciſe Definition of what conſtituted a Diſſeiſin, ſuch as made the Diſſeiſor the Tenant to the Demandant's *Precipe*, tho' the right Owner's Entry was not taken away, is not now known; but it was, ſome way or other, turning the Tenant out of his Tenure, and uſurping his Place and *feudal Relation*. It was a complicated Fact; and differed from *diſpoſſeſſing*. The Freeholder by Diſſeiſin differed from a Poſſeſſor by Wrong, or mere Intruder without Inveſtiture. *Taylor* v. *Horde*, *H.* 30 *G.* 2. 1 *B. M.* 60.]

[Caſes where the true Owner thinks fit to *admit* himſelf diſſeiſed in order to bring his Aſſize, are very different from *actual* Diſſeiſins in ſpite of the true Owner, *i. e.* from ſuch Diſſeiſins as made the Diſſeiſor Tenant to every Demandant, and Freeholder *de facto* in ſpite of the true Owner. *Ibid.*]

[Diſſeiſin at *Election* is very different from *actual* Diſſeiſin, tho' the ſame Term is applied to both. *Ibid.*]

Diſſeiſin is the tortious Ouſting of Seiſin in Lands or Tenements. *Co. L.* 153. *b.*

As, if a Man enters into Lands or Tenements, where his Entry is not *congeable*, and ouſts another of his Freehold. *Lit. S.* 279.

If he enters upon the Poſſeſſion of a Leſſee, this ouſts the Leſſor of his Freehold.

Tho' the Leſſee continues Payment of his Rent afterwards. *Dub.* 1 *Rol.* 658. *l. ult.*

So,

So, if a Man disturbs the Entry of him, who has Right, into Land, it will be a Disseisin. 1 *Rol.* 659. *l.* 15.

If he cuts down Trees contrary to the Command of him, who has Right.

If he comes to an House, that is locked up, and takes the Door in his Hand, and claims it in fee; tho' he does not enter, it will be a Disseisin of the House. *R.* 1 *Rol.* 659. *l.* 5.

So, if a Copyholder leases by Licence for Years, and afterwards ousts his Lessee, it will be a Disseisin to the Lord. 1 *Rol.* 662. *l.* 47.

So it will be a Disseisin, tho' made by Colour of Right: As, if Tenant for Life or Years makes a Feoffment, and the Feoffee enters, he will be a Disseisor.

So, if he makes a Gift in Tail, or Lease for Life, other than his own Life, and the Donee or Lessee enters.

So, if Lessee at Will, or by Sufferance, makes a Lease for Years, and the Lessee enters. *R. Cro. El.* 830.

If the Lessee continues in Possession after a Fine, or Surrender to the Lessor.

Or after his Term expires, after Entry, or against the Will of the Lessor.

So, if the King's Patentee enters, where the King has no Right to make a Grant.

If the Escheator, or other Officer of the King, seises the Land without Cause.

If a Man, who has no Right, obtains Land out of the Hands of the King upon false Suggestion. 1 *Rol.* 658. *l.* 40.

If a Demandant enters *pendente Lite.*

Or sues Execution, after his Release given, after Verdict, and before Judgment.

Or enters after a Recovery utterly void.

If a Sheriff upon a General Writ makes Execution of other Land. 1 *Rol.* 664. *l.* 5.

So, if an Officer executes an Office, to which another has a Right, by Appointment of the Court, he will be a Disseisor.

If a Woman takes Dower, to which she has no Title, by Assignment of a Guardian, she will be a Disseiseress.

So, if a Man enters by Feoffment of a Guardian.

If a Guardian continues Possession after full Age of his Ward, he will be a Disseisor. *Co. L.* 57. *b.* 1 *Rol.* 659. *l.* 50.

So, if a Man enters by Release of an Infant, he will be a Disseisor.

If he enters to make Livery for him, who has no Right.

If he enters by Colour of a Lease from the Disseisor after the Entry of the Disseisee. 1 *Rol.* 662. *l.* 30.

And every one will be a Disseisor, who is *Particeps Criminis:* As, if a Man commands another expressly to make a Disseisin. 1 *Rol.* 663. *l.* 20, 25.

If he gives Assent precedent or subsequent to the Disseisin.

If a Lessee, Guardian, Tenant by *Elegit, &c.* makes a Feoffment, *&c.* he will be a Disseisor, as well as the Feoffee, *&c.* who enters.

So, if a Lessee attorns, or voluntarily pays his Rent, to a Stranger.

So a *Feme Covert*, or Infant, may be a Disseisor by actual Entry, without her Husband. 1 *Rol.* 660. *l.* 30.

Or, if they agree to a Disseisin by another after the Coverture determined, or at full Age. 1 *Rol.* 660. *l.* 23.

So, if a Man enters by Disseisin, he will be a Disseisor tho' he claims only for Years: As, Tenant by Statute, in Dower, *&c.* where they have no Right to it; for they cannot qualify their Wrong. 1 *Rol.* 662. *l.* 35, 40.

If one Parcener enters, claiming the Whole, and takes the Profits of the Whole, it will be a Disseisin of his Partner. *Co. L.* 373. *b.* 243. *b.* *Vide Parcener*, (A. 3.)

What shall be a Disseisin of a Rent, *Vide Rent*, (D. 2.)

(F. 2.) What not.

But an Act, which does not oust him, who has the Freehold, tho' it be tortious, will not be a Disseisin: As, if a Commoner commands the Owner of the

Soil not to cut down Trees, whereupon he desists, and goes off out of the Land, it is no Disseisin; for he, who has Right, shall not be ousted of his Seisin by *Parol.* 1 *Rol.* 659. *l.* 10.

So, if *A.* enters upon the Possession of *B.* but does not expel him, it is no Disseisin. 1 *Sal.* 246. *Co. L.* 181. *a.*

So, if a Man makes a Lease, off the Land, to him, who has the Possession, and Rent be paid to him, it will not be a Disseisin, without more. 1 *Rol.* 659. *l.* 40, 45. *Vide infra.*

So, if a Man erects a Shop in a Vacant Place of the King's Manor, without paying Rent, it will not be a Disseisin; for the King cannot be ousted of his Seisin. 1 *Rol.* 659. *l.* 25.

Tho' he continues in the Shop after a Grant of the Manor by the King to another in Fee; for the first being no Disseisin, the Continuance of the same Act will not be so. *R.* 1 *Rol.* 659. *l.* 25.

So, if a Man enters upon the Land of *A.* in Ward of the King, and takes the Profits as Owner, and continues the Possession after Livery sued by *A.* it will not be a Disseisin, when the first Act was not so. *R.* 1 *Rol.* 654. *l.* 30.

So, if Tenant *in Capite* devises all his Land, which is void for a third Part, and the Devisee enters, and makes a Lease of the Whole, it will not be a Disseisin; for he was Tenant in Common with the Heir, and Tenant in Common cannot be ousted without actual Ejectment. *R.* 1 *Rol.* 658. *l.* 45. *Mo.* 546.

So, tho' the Devisee levy a Fine of the Whole. 1 *Rol.* 658. *l.* 50.

So a Disseisin of Part of a Manor, Rent, *&c.* if there can be a Severance, will not be a Disseisin of the Whole. 1 *Rol.* 664. *l.* 21.

So, it will not be a Disseisin, where a Man enters by Sufferance of the Owner. 1 *Rol.* 659. *l.* 20. *R.* 1 *And.* 134.

So, if a Lessee continues in Possession after his Term, without other Act; for he is only Tenant by Sufferance. 1 *Rol.* 659. *l. ult.*

So, if a Stranger makes a Lease by Indenture to Tenant by Sufferance, without ousting the Possession, it will not be a Disseisin; tho' Tenant by Sufferance pays him the Rent upon the Lease. *R.* 1 *Rol.* 659. *l.* 40.

So, if Guardian by Nurture makes a Lease to any one in Possession under the Title of the Infant, rendring Rent to himself, which is paid accordingly, it will not be a Disseisin. 1 *Rol.* 659. *l.* 45.

So, if a Man enters, claiming only a lawful Estate, he will not be a Disseisor, tho' he has no Right to it: As, if a Man makes a Lease to *B.* and his Heirs for Years, and the Heir enters, claiming the Term which does not belong to him. 1 *Rol.* 662. *l.* 45.

If a Devise be void for a third Part, and the Devisee enters, claiming the Whole by the Devise. *R. Cro. El.* 641.

So, if a Sheriff, *&c.* does Execution pursuant to his Authority, he will not be a Disseisor, tho' the Judgment or Process was erroneous. *R.* 1 *Rol.* 664. *l.* 5.

As, if the Sheriff makes Restitution after a Reversal in Error, without a *Scire facias* against the Terretenants who were not Parties to the Record, as they ought to be. *R.* 1 *Rol.* 663. *l.* 50.

[Where an Ejectment is brought, there can be no Disseisin. *Taylor* v. *Horde*, *H.* 30 *G.* 2. 1 *B. M.* 60.]

[Taking Possession under a Judgment in Ejectment is not a Disseisin of the Freehold: nor can the true Owner *elect* to make it so. For the Entry is under Authority, and lawful, therefore not liable to be punished by Fine; nor can the true Owner *enter* upon such Recoveror *as* a Disseisor. *Ibid.*]

(F. 3.) What shall be so, or not, at Election.

So, if a Lessee at Will or by Sufferance makes a Lease, it will not be a Disseisin but at the Election of the Lessor. *R.* 1 *Rol.* 661. *l.* 25. *Cro. Car.* 302. *Jon.* 316. *Vide Estates*, (H. 1, 2.)

So,

So, if a Man enters by Colour of a Leaſe, which is void, and pays Rent to the Leſſor, he will not be a Diſſeiſor, but at the Election of the Leſſor. *R.* 1 *Rol.* 661. *l.* 45.

Tho' he claims a Leaſe for Life, as well as where he claims by a Leaſe for Years or at Will. *R. Cont.* 1 *Rol.* 662. *l.* 10. *Vide Eſtates*, (H. 1, 2.)

So, if *A.* makes a Leaſe for Years, and afterwards makes a Jointure, and aliens the Fee to *B.* who enters, and takes the Rent of the Leſſee, and then the Wife enters, claiming her Jointure, and takes the Rent, it will be a Diſſeiſin, or not, at the Election of *B.* 1 *Rol.* 662. *l.* 15.

So, if a Leſſee attorns, or pays his Rent, to a Stranger without Coercion, without more, it will not be a Diſſeiſin, but at the Election of the Leſſor. 1 *Rol.* 659. *l.* 17.

So, if a Man enters, claiming as Guardian, when he has no Right to be ſo, it will not be a Diſſeiſin, but at the Election of the Heir. 1 *Rol.* 661. *l.* 20.

If he enters upon the Land of an Infant by his Aſſent, for his Aſſent is void. 1 *Rol.* 661. *l.* 40.

(F. 4.) Who ſhall not be a Diſſeiſor.

So the King or Queen cannot be a Diſſeiſor.

So a Feme Covert ſhall not be a Diſſeiſoreſs by the Act of her Huſband, or a Stranger. 1 *Rol.* 660. *l.* 5. 10.

Tho' ſhe agrees to it during the Coverture; for her Agreement is void. 1 *Rol.* 660. *l.* 15, 20.

So an Infant cannot be a Diſſeiſor by the Act of a Stranger, tho' he agrees to it during his Nonage. 1 *Rol.* 660. *l.* 25. 35.

Tho' the Feme Covert or Infant be preſent, when the Huſband, or Stranger, enters, without more. 1 *Rol.* 660. *l.* 37. 661. *l.* 12.

So a Feme Covert by actual Entry cannot make a Diſſeiſin to the Uſe of her Huſband, or a Stranger. 1 *Rol.* 660. *l.* 50.

So a Corporation cannot make a Diſſeiſin in their Corporate Capacity, for the Perſon who does the Act is the Diſſeiſor in his natural Capacity. 1 *Rol.* 661. *l.* 5.

So, if a Man commands *A.* to enter into Land, when he has no Right, and *A.* enters accordingly, *A.* alone will be the Diſſeiſor, and not he who gave the Command. 1 *Rol.* 663. *l.* 10, 15.

If a Man leaſes the Land of another for Years off the Land, and the Leſſee enters, the Leſſee alone will be the Diſſeiſor. 1 *Rol.* 663. *l.* 27.

But if a Leſſee at Will or by Sufferance makes a Leaſe for Years, the Leſſor only will be the Diſſeiſor. *R.* 1 *Rol.* 663. *l.* 30, 40.

Vide more concerning *Seiſin* in *Pleader*, (C. 33.—E. 22.)

Primier Seiſin.

Vide Prærogative, (D. 59.)

SEISURE.

Vide Copyhold, (H. 7.—K. 20, 21, 25.—*Prærogative*, (D. 68.)

—— of Arms.

Vide Juſtices of the Peace, (B. 12.)

——of Felons Goods.

Vide Forfeiture, (B. 4, 7, 8.)—*Juſtices*, (Z)—*Pleader*, (2 S. 18.)

——of forfeited Goods.

Vide Trade, (C. 6.)

——of Temporalties.

Vide Prærogative, (D. 23, &c.)

SEMINARY.

Vide Popery, (B. 6.)

SEQUESRATION.

Vide Chancery, (D. 7.)

SEREMENT.

(A) When an Oath ſhall be required.

NO Oath can be required, unleſs it be eſtabliſhed by Act of Parliament, or by Common Law. 2 *Inſt.* 479.

The Oaths of Judges, Councellors, Sheriffs, Under-Sheriffs, Eſcheators, Attornies, Mayors, and Bailiffs, are eſtabliſhed by Act of Parliament. *Ibid.*

When the Oath of Allegiance ſhall be required, *Vide Allegiance*, (B. 1, &c.)

(B) When not.

BUT a new Oath, not eſtabliſhed by the Common Law or Authority of Parliament, cannot be impoſed upon a Judge, Commiſſioner, or other Subject. 2 *Inſt.* 479.

Tho' allowed by the King's Patent. *Semb. per Cooke*, 1 *Rol.* 5.

But an Addition to an Oath, which is for the publick Good and due Execution of his Office, may be made by Order of the King and the State without Parliament. *Semb. Cro. Car.* 26.

And therefore by the Common Law *Juramentum Calumniæ in Cauſis Eccleſiaſticis* could not be required of Laymen, except *in Cauſis Matrimonial' et Teſtament.* 2 *Inſt.* 657.

Tho' allowed by the Conſtitution of *Otho*, 21 *H.* 3. *A.* 1236, for a Canon contrary to a Statute or the Cuſtom of the Realm has no Force. 2 *Inſt.* 658.

Tho' it ſeems to be warranted by the *St.* 2 *H.* 4. 15. for that was repealed by the *St.* 25 *H.* 8. 14. and 1 *Ed.* 6. 12. and tho' revived by the *St.* 1 & 2 *Ph. & M.* 6. was afterwards repealed by the *St.* 1 *El.* 1. and continues repealed. 2 *Inſt.* 658.

But it might be demanded of the Clergy. 2 *Inſt.* 657.

And of a Layman in a Matrimonial or Teſtamentary Cauſe, for in theſe Caſes the Tranſaction is often in private. 2 *Inſt.* 657.

So no Perſon, Eccleſiaſtical or Temporal, ſhall be examined upon Oath in an Eccleſiaſtical Court, of his Thoughts. 2 *Inſt.* 658. *Vide Prohibition,* (G. 13.)

By the *St.* 13 *Car.* 2. 12. No Eccleſiaſtical Judge may tender an Oath *ex Officio*, or any Oath whereby any Perſon may be charged to accuſe, purge himſelf of, or confeſs any Criminal Matter, that may ſubject him to Cenſure or Puniſhment.

And therefore no one can be bound by the Spiritual Court to take an Oath to preſent or accuſe himſelf. *Hard.* 364.

Nor to make Oath, that he will preſent upon ſuch Articles *inter alia. Ibid.*

Nor to take an Oath, except in a Matter proper for the Juriſdiction of the Spiritual Court, as, *in Cauſa Matrimonial' vel Teſtamentar'*. *Hard.* 364. 2 *Inſt.* 657. 1 *Rol.* 220. 2 *Bul.* 182. *Vide Prohibition,* (G. 4.)

Nor to anſwer upon a Matter within their Juriſdiction upon Oath before it be preſented by two at leaſt. *R. Cro. El.* 262.

Nor to anſwer upon a Matter, which ſubjects him to a penal Law; tho' the Juriſdiction of the Spiritual Court be ſaved: As, if he takes Uſury, hears Maſs, *&c.* 2 *Inſt.* 657. 2 *Rol.* 305. *l.* 15, 25. 2 *Cro.* 388. 1 *Rol.* 220. 2 *Bul.* 183.

Nor to give an Account of his Faith. 2 *Rol.* 305. *l.* 35.

Nor to anſwer to an Accuſation of Incontinency, *&c.* *R. Cro. El.* 201.

Or of Covin or Fraud in a Leaſe for Years. *R. Hob.* 84.

Nor to anſwer to a Matter, which, being proved, will be a Forfeiture of his Freehold. *R. Sal.* 550.

Or a Forfeiture of his Bond. *R.* 1 *Rol.* 110.

[The ſuppletory Oath may be tendred to the Party by the Judge in the Eccleſiaſtical Courts, on a *ſemiplena Probatio in Cauſa Matrimonial'*. *Williams* v. *Oſborne, Delegates* 1717. *Str.* 80.]

[The Exerciſe of it lies *in Arbitrio Judicis. Ibid.*]

So an Oath eſtabliſhed by a Canon to make no Alteration in the Government of the Church by Archbiſhops, Biſhops, Deans, Archdeacons, *&c.* is not legal. 3 *Ruſh.* 1186, 1205.

Nor an Oath eſtabliſhed by a By-Law of the Dean and Chapter, who have Power to make By-Laws, before an Archdeacon ſhall be admitted to his Office, *R.* 2 *Mod. Ca.* 27.

So the Secondary of the King's Bench cannot examine upon Oath, but the Examination ſhall be in the Crown-Office. 2 *Rol.* 499.

[An Affidavit cannot be taken by a Commiſſioner who is the Party's Attorney, or his menial Servant, or his Agent in that Cauſe; but if only Agent in another, he may. *Cockſedge* v. *Rickwood, C. B. P.* 20 *G.* 2. *Barnes* 45.]

(C) When required of a Peer.

SO all Lords of Parliament in the Trial of Cauſes before them ſhall not take any Oath. *Seld. Vo.* 3. *p.* 2. 1533.

So, by the antient Law, when they anſwer as Defendants in any Court, the Anſwer ſhall be, upon Proteſtation of their Honour, without Oath. *Cont. per Juſt.* but it was *R. acc. in Parliament,* 2 *Car. Jon.* 154. *Per Harcourt, Sal.* 513. *Seld.* 3 *Vo. p.* 2. 1335.

Tho' the Anſwer be to a Charge againſt him; as in the Star-chamber, *&c.* *R. cont. Hut.* 87.

But a Peer made Chancellor, Treaſurer, Juſtice of the Peace, or other Officer, ſhall take the uſual Oath of Office. *R. Jon.* 152.

So he ſhall take the Oath of Homage. *Jon.* 152.

So, if he wage his Law, it ſhall be upon Oath. *Jon.* 153.

So, if he be a Witneſs. *Jon.* 153. *Sal.* 513. *Semb. cont. Seld.* 3 *Vo. p.* 2. 1535. *R. acc.* 2 *Mod.* 99. *Acc. Dy.* 314. *b. in Marg.*

Or make an *Affidavit*. *Sal.* 513.

Or be examined upon Interrogatories. *R. per Harcourt, Sal.* 513.

And when ſworn, a Peer puts his Hand upon the Goſpels, as others do. *Dy.* 314. *b. in Marg.*

Perjury, How puniſhed. *Vide in Juſtices of Peace,* (B. 104, &c.)

SERJEANT AT ARMS.

Vide Chancery, (D. 6.)

SERJEANT AT LAW.

Vide Ley, (D. 2, 3.)

SERJEANTY.

Vide Homage, (F.)

SERVANTS.

Vide Juſtices of the Peace, (B. 58, &c.)

SERVICES.

AS to the Services or Tenures whereby Lands are held, *Vide Homage,* (A. B, &c.)

How a Seigniory ſhall be created by Reſervation of Services, *Vide Seigniory,* (A.)—*Honour.*

Vide more concerning *Services* in *Copyhold,* (K. 8.—M. 4.)—*Pleader,* (3 K. 15.)—*Suſpenſion,* (A.)

The King's Service.

Vide War, (B. 1, &c.)

Knight's Service.

Vide Homage, (G. 1, &c.)

Writ of Services.

Vide Droit, (G.)

SESSIONS.

Vide Aſſiſe, (B. 23.)—*Juſtices of the Peace,* (D. 1, &c.)

Seſſions of Parliament.

Vide Parliament, (Q.)

SET-

SETTLEMENT.

Marriage Settlement.

Vide Chancery, (3 M. 3, 5.)—3 Z. 1, &c.)

Voluntary Settlement.

Vide Chancery, (3 M. 5.—4 H. 9.—4 O. 7.)

Settlement of the Poor.

Vide Juſtices of the Peace, (B. 71, &c.

SETTLED USE.

Vide Uſes, (K. 5.)

SEVERANCE.

Vide Aſſiſe, (B. 10.)—*Copyhold*, (Q. 4.)—*Eſtates*, (K. 5.)

—— of Tithes.

Vide Diſmes, (I. 1, 2.)

SEWERS.

(A) Commiſſion of Sewers.

BY the Common Law the King might make a Commiſſion for the Survey and Repair of the Banks, Walls, and other Fences againſt the Sea, before any Statute of Sewers. 10 *Co.* 141. *F. N. B.* 113.

But by the *St.* 6 *H.* 6. 5. it was firſt Enacted, that Commiſſions of Sewers be granted; and it preſcribes their Form.

And now by the *St.* 23 *H.* 8. 5. Commiſſions of Sewers ſhall be directed in all Parts in the Realm, when and where Need ſhall require, according to the Tenor there enſuing.

(B) To whom granted.

BY the *St.* 23 *H.* 8. 5. The Commiſſion of Sewers ſhall be directed to ſuch ſubſtantial and indifferent Perſons as ſhall be named by the Lord Chancellor, Lord Treaſurer, and two Chief Juſtices, or any three of them, whereof the Chancellor to be one.

And by the ſame Statute, Every Perſon named a Commiſſioner ſhall attend the Execution of the ſaid Commiſſion.

And before he acts ſhall take an Oath before the Lord Chancellor, or ſuch, to whom a *Dedimus Poteſtatem* is by him directed to take the ſame, or before the Juſtices of Peace at the Quarter-Seſſions for the ſame County, truly to execute the Authority, *&c.*

And,

And, if any one ſits as a Commiſſioner before he is ſworn, he forfeits 40*l.* for every Time; a Moiety to the King, a Moiety to him that ſhall ſue, *&c.*

And by the *St.* 25 *H.* 8. 10. Any Commiſſioner refuſing to be ſworn, the Refuſal being returned into *Chancery* on the King's Writ, ſhall forfeit five Marks for every ſuch Contempt, unleſs he ſhew reaſonable Cauſe to the Chancellor for ſuch Refuſal.

But by the *St.* 23 *H.* 8. 5. None ſhall ſit as a Commiſſioner, not having Lands, Tenements, or Hereditaments in Fee, in Tail, or for Life, of forty Marks *per Annum*, above all Charges, to his own Uſe, except he be reſiant in and free of ſome City, Borough and Town Corporate, and have moveable Subſtance of 100*l.* Value, or be an Utter Barriſter at Law, on Pain of 40*l.* a Moiety to the King, a Moiety to the Informer.

By the *St.* 25 *H.* 8. 10. None ſhall be bound to act in the Commiſſion, unleſs he be dwelling in the ſame County.

By the *St.* 13 *El.* 9. No Farmer for Years of Lands within the Limits of the Commiſſion ſhall intermeddle in the Execution of the Commiſſion, unleſs he have 40*l. per Annum* Freehold, and then only as to ſuch Lands which he holds not as Farmer.

And therefore, if a Man be intitled to a Reverſion, or Remainder after an Eſtate for Life, of the annual Value of forty Marks, he cannot be a Commiſſioner, for he has not an Eſtate *in præſenti*. *Cal.* 194.

So, if he be ſeiſed of Franchiſes or Liberties, if they are not demiſed for the annual Rent of forty Marks, for tho' they are Hereditaments, they are not of an annual Value. *Ibid.*

Or, if he be ſeiſed of Caſual Services: As, Homage, Heriot, Relief, *&c.* *Ibid.*

Or, if he be ſeiſed of an Advowſon, for it is of no Value. *Ibid.*

So Jointenants, or Tenants in Common, or Parceners of Lands of forty Marks *per Annum*, cannot be Commiſſioners, for tho' they are ſeiſed *per my & per tout*, yet each has only a Moiety. *Cal.* 195.

So a Man ſeiſed in Right of his Wife cannot be a Commiſſioner. *Ibid.*

Nor a Man ſeiſed in Truſt for another. *Ibid.*

Nor a Dean and Chapter, Mayor and Commonalty, or other Corporation Aggregate ſeiſed *Jure Incorporationis*. *Ibid.*

So an Alien cannot be a Commiſſioner. *Cal.* 196.

Nor a Leſſee for Years of a Farm, unleſs he has alſo a Freehold of 40*l. per Annum*. *Cal.* 197.

So a Diſſeiſee before Entry cannot be a Commiſſioner. *Cal.* 198.

Nor a Bargainee of Lands before Inrolment, tho' the Deed be afterwards inrolled. *Ibid.*

So a Freeman of a Corporation cannot be a Commiſſioner, unleſs he be alſo reſiant within the Borough, and have 100*l.* Perſonal Eſtate. *Cal.* 191, 192.

If he be not actually admitted to his Freedom. *Cal.* 190.

And Reſiancy in Law is not ſufficient, unleſs he be actually reſident within the Borough. *Cal.* 191.

Tho' he inhabit within the Walls, if he be not alſo within the Precinct and Liberty of the Borough. *Cal.* 192.

So, if a Freeman has no Perſonal Eſtate in Poſſeſſion, it is not ſufficient, tho' he has Debts upon Statute, Judgment, Bond, or Contract, to the Value of 100*l.* *Ibid.*

So, if he has it not in his own Right, tho' he is poſſeſſed of it in Right of his Church, or as a Member of a Corporation, *&c.* *Cal.* 193.

Or as Leſſee for Years upon a Demiſe. *Cal.* 196.

Yet an Utter Barriſter may be a Commiſſioner tho' he has not any Lands. *Cal.* 198.

So a Man may be a Commiſſioner having forty Marks *per Annum*, tho' he be a Villein. *Cal.* 196.

Or be an Infant. *Cal.* 202.

So a Woman may. *Ibid.*

So a Man who has Lands in reſpect of his Office: As, the Warden of the *Fleet*, *&c.* ſeiſed for Life of an Office, to which forty Marks *per Annum* belong. *Cal.* 196.

So a Biſhop, Parſon, *&c.* ſeiſed in Right of his Church. *Cal.* 196.

So, it is ſufficient if he have Lands of forty Marks, when he acts as a Commiſſioner, tho' he had not when the Commiſſion was granted. *Cal.* 198.

Or, tho' he afterwards ſell them. *Ibid.*

So, if a Freeman has 100 *l.* Perſonal Eſtate, it is ſufficient in whatever Place it lies. *Cal.* 193.

Or, by whatever Means he obtained it. *Cal.* 193, *&c.*

But, if a Perſon not qualified act as a Commiſſioner, he will be ſubject to the Penalty, but his Acts and Decrees remain good. *Cal.* 203.

(C) Authority of the Commiſſioners.

(C. 1.) To what Things it extends.

BY the *St.* 23 *H.* 8. 5. Commiſſions of Sewers ſhall be directed in all Parts within this Realm, *&c.*

And therefore all the *Engliſh* Sea, being *infra Regnum Angliæ*, may be within the Juriſdiction and Extent of the Commiſſion of Sewers. *Cal.* 18.

So the Iſle of *Man*, the Iſle of *Wight*, *Wales*, and other antient or new Iſlands within the Kingdom of *England*. *Cal.* 20.

So Lands deſerted by the Sea. *Cal.* 22.

The Shores and Coaſts of the Sea. *Cal.* 30, 32.

The Arms of the Sea, Creeks, Havens and Ports. *Cal.* 33.

But the Authority of the Commiſſioners does not extend beyond the Limits of their particular Commiſſion. *Cal.* 36.

So Land deſerted by or gained from the Sea after the Commiſſion granted cannot be within the Juriſdiction of the ſame Commiſſion. *Cal.* 38.

So the Sea, or Creeks and Bays of the Sea, are not within the Management of the Commiſſion. *Cal.* 38.

So Lands deſerted, before they are got to be profitable, are not within the Defence of the Commiſſion. *Cal.* 38.

And therefore the Commiſſioners may build a Wall, Bank, *&c.* for the Advantage of the other Country, but not for the Defence of the Lands deſerted, till they are profitable. *Cal.* 38.

(C. 2.) What Defences they may mend.

By a Commiſſion founded upon the *St.* 23 *H.* 8. 5. it is recited, *That foraſmuch as the Walls, Banks, Gutters, Sewers, Gotes, Calcyes, Bridges, Streams and other Defences by the Sea Coaſt and Marſh Ground within the Limits of* A. *&c. or the Confines of the ſame, by the Rage of the Sea, or by Means of Trenches of freſh Water, having Courſe to the Sea, be ſo lacerate, &c. We therefore have aſſigned you or ſix of you (three Quorum) to ſurvey the ſaid Walls, &c. and the ſame Cauſe to be made, corrected, repaired, amended, put down, or reformed, as the Caſe ſhall require, &c.* 10 *Co.* 143. *a.*

And therefore the Commiſſioners have Authority for repairing the Walls and Banks of the Sea. *Cal.* 37, 38.

And alſo the Banks and Walls of navigable and other Rivers which have a Courſe to the Sea. *Cal.* 52.

So they may reform ſuch Walls and Banks, if neceſſary. *Cal.* 51, *&c.*

So the Commiſſioners have Power of Rivers, Gutters, Ditches, Ponds, Pools, Sewers and Streams. *Cal.* 57, *&c.*

So, if a navigable River becomes dry, they may, for the Benefit of the Navigation, ſupply it with Water from another River, which has a Superfluity. *Cal.* 62.

Tho' the Navigation be only for private Boats for Carriage of the Goods of others, for that is a common Benefit. *Cal.* 62.

So the Commiſſioners have Power of all Bridges wh ch ſtand upon Lands ſurrounded. *Cal.* 63.

So the Commiſſioners may make *de novo* the antient Walls, Rivers, *&c.* where they are decayed or totally periſhed. 10 *Co.* 141, 2.

So when they make a new Wall, *&c.* they may make any little Alteration for the Good of the Publick: As, if a Wall, *&c.* muſt of Neceſſity be rebuilt, they may make it in a Place more commodious for the Level, for it is not a new Invention, but an Improvement of the antient Means for Preſervation of the Level. 10 *Co.* 142. *b.*

But Banks, Walls, *&c.* for Fences of private Grounds are not within the Power of the Commiſſioners. *Cal.* 54.

Tho' they are made to Ditches, Gutters, or Streams for watering or draining their private Soil. *Cal.* 54.

Or for Inning and Securing of private Marſhes. *Ibid.*

So Conduits, *&c.* for private Uſe or Convenience, are not within their Power. *Cal.* 60.

So, if the Town of *B.* be deſtitute of Water for Cattle, *&c.* and the Town of *C.* abounds, the Commiſſioners cannot make an Order for the Relief of *B.* *Cal.* 61.

So they cannot make an Order for conveying a River or other Stream (as the Cut from *Ware* to *London*, *&c.* to any Town or City for Houſhold Affairs, for they have no Power but for Draining and Navigation. *Cal.* 62.

Nor for Navigation of private Boats for a Man's private Uſe. *Ibid.*

So, it is not within the Power of the Commiſſioners to make new Works, where there was Nothing of that Nature before: As, to make a new Cut from one Part of an old River for ſeven Miles to another. *R.* 10 *Co.* 141, 2.

Nor new Drains, Banks, or Sluices. *R. Mo.* 825.

So they ought not to make an antient Wall, *&c. de novo*; if by a Reparation the Peril can be avoided. 10 *Co.* 142. *b.*

(C. 3.) What Annoyances they may reform.

So by Commiſſion founded upon the 23 *H.* 8. 5. the Commiſſioners have Authority not only *to ſurvey Walls, &c. but becauſe the Common Paſſages of Ships, Boats, &c. in Rivers, &c. by Means of ſetting up and making Streams, Mills, Mill-dams, Bridges, Ponds, Fiſhgarths, Locks, Wears, Flood-gates, and other like Annoyances, be interrupted, &c. the Commiſſioners may cauſe the ſame to be made, corrected, amended, put down, or reformed, as the Caſe ſhall require, after their Diſcretions.* 10 *Co.* 143. *a.*

And therefore Commiſſioners of Sewers may throw down or reform all Annoyances of late Times erected to the Prejudice of the Publick Good. *Cal.* 54.

But the Commiſſioners cannot pull down, or reform, any Impediments, *&c.* but according to Power to them given by ſome Statute. *R.* 10 *Co.* 138.

And therefore they cannot remove, *&c.* any Mill, Cawſey, *&c.* erected before the Time of *Ed.* 1. if it be not afterwards inlarged. *Ibid.*

Or, if it be afterwards enlarged, they cannot throw it down, but only reform the Enlargement. *R.* 10 *Co.* 138. *b.*

(C. 4.) What they may do by a Survey.

By Commiſſion upon the 23 *H.* 8. 5. The Commiſſioners may *ſurvey Walls, Streams, Ditches, Banks, Gutters, Calcyes, Sewers, Bridges, Mills, &c. and other Impediments and Annoyances aforeſaid.*

And by ſuch Survey they may inform themſelves what Defences want Repair, or not. *Cal.* 81.

What Annoyances there are. *Cal.* 82.
In what Particular the Defect conſiſts. *Cal.* 81.
What Materials or Money ought to be provided for ſuch Defects. *Cal.* 81.
So by a Survey they may determine, whether a new Sluice, Sewer, or other Defence is neceſſary, and in what Place. *Cal.* 83.
So they may direct the Repair of a Defence, which by Survey appears neceſſary. *Cal.* 82.
Or the Removal of a Thing which upon a Survey appears to be an Annoyance. *Ibid.*

(C. 5.) What by Jury.

So by Commiſſion upon the *St.* 23 *H.* 8. 5. Commiſſioners are aſſigned *to ſurvey, &c. and alſo to inquire by the Oaths of lawful Men of the Shire or Place, where ſuch Defaults or Annoyances be, through whoſe Default the ſame have happened, who holds any Lands, Tenements, Common, &c. or may have Hurt, &c. by the ſaid Walls, Ditches, Sewers, &c.*
And therefore the Commiſſioners ought to inquire by a Jury, by whom any Annoyances are erected, and they cannot determine by Survey, or otherwiſe, without Inqueſt. *Cal.* 82.
By whoſe Default a Wall, Bank, *&c.* or other Defence, is defective. *Cal.* 83.
Who are liable to repair by Preſcription, Tenure, *&c.* *Cal.* 83.
What Lands lie within Danger, *&c.* and who is the Owner. *Ibid.*

(C. 6.) Jury, How ſummoned, *&c.*

By Commiſſion the Commiſſioners are authorized *to make and direct all Writs, Precepts, Warrants, &c. to all Sheriffs, Bailiffs, Officers and other Perſons within Liberties, or without, &c.*
And the Sheriff is commanded to cauſe to come before them, &c. at the Days and Places they appoint, as many honeſt Men of the Bailiwick, &c. to inquire of the Premiſſes.

(D) Commiſſioners have a Court of Record.

In what Caſes they have Juriſdiction.

COMMISSIONERS of Sewers are Juſtices, and have a Court of Record. *Cal.* 128.
By the *St.* 23 *H.* 8. 5. The Commiſſioners may hear and determine all Matters within their Commiſſion, at the Suit of the King, or of any other complaining before them, after the Laws and Cuſtoms of *Romney* Marſh, and after their Diſcretions. *Vide Poſt*, (H. 1.)
And therefore any Perſon may prefer his Bill of Complaint before Commiſſioners of Sewers for a Matter within the Authority of the Commiſſion. *Cal.* 129, 173.
So, if the Goods of *B.* are taken upon a Diſtreſs againſt *A.* tho' it be tortious, and without Authority of the Commiſſion, yet *B.* may have Redreſs and his Damages upon Complaint before the Commiſſioners. *Cal.* 173.
So, if an Officer for a Diſtreſs takes more than he ought, the Commiſſioners will oblige him to return the Overplus. *Cal.* 174.
Or, if the Diſtreſs upon a Town be levied upon one Perſon, they ſhall make the others contributory. *Ibid.*
If an Officer buys Timber, *&c.* for the Repair of a Wall, *&c.* the Vendor ſhall have a Remedy before the Commiſſioners. *Cal.* 175.
Or, if he makes a Trench, *&c.* by Order of the Commiſſioners upon the Land of another. *Ibid.*
So Labourers, *&c.* may here recover their Wages, *&c.* *Ibid.*

But

But for a collateral Matter they have not Authority: As, if *A.* be diſſeiſed of Lands within the Level, chargeable to the Repair, *&c.* the Commiſſioners cannot give Relief. *Cal.* 174.

Or if a Wall, which *A.* ought to repair, be thrown down, whereby the Lands of *B.* are ſurrounded, the Commiſſioners cannot give *B.* Damages for it. *Ibid.*

(E) When Commiſſioners may make a Tax.

(E. 1.) For what Cauſes.

BY Commiſſion, the Commiſſioners may *reform, repair, &c. Walls, Ditches, Gutters, Sewers, &c. in all Places needful, and, if need be, make new, and cleanſe, &c. the Trenches, Sewers, &c. and amend, proſtrate, &c. all Mills, Streams, &c. and other Annoyances, &c. And hear the Accounts of Collectors, &c. for Receipt and laying out Money levied and paid in or about making, repairing, reforming, &c. Walls, Ditches, &c. and other Annoyances.*

And alſo may take as many Carts, Horſes, &c. and as many Workmen, &c. as for ſuch Reparations, &c. ſhall ſuffice, paying for the ſame competent Wages, Salary, &c.

And alſo take as many Trees, Woods, Timber, &c. as for the ſaid Works, &c. ſhall be ſufficient, at a reaſonable Price, &c.

So by the *St.* 23 *H.* 8. 5. The Commiſſioners may every one have 4*s. per Diem*, for every Day they take Pains in the Execution of the Commiſſion, and one Clerk 2*s. per Diem* out of the Rates, Taxes, *&c.* aſſeſſed by Authority of the ſaid Commiſſion.

And they may aſſign of the ſame Rates, Taxes, *&c.* to the Clerk for writing Books and Proceſs in the Premiſſes, and to Collectors, Expenditors, and others, who ſhall take Pains in Execution of the Commiſſion, as they ſhall think reaſonable.

(E. 2.) How aſſeſſed.

By Commiſſion upon the *St.* 23 *H.* 8. 5. The Commiſſioners are authorized *to inquire, &c. And all thoſe (viz. who have or may have Hurt or Loſs, &c.) to tax, aſſeſs, charge, &c. after the Quantity of their Lands, Tenements, Rents by the Number of Acres, &c. after the Rate of every Man's Portion, Profit, &c. by ſuch Ways and Means, &c. as ſhall ſeem moſt convenient for Redreſs of the Premiſſes.*

And upon this the regular Courſe is, that the Jury preſent the particular Quantity of Land, or other Profit, that every one, who may have Benefit by the Repair, or Prejudice by the Non-Repair, has within the Level, and thereupon the Commiſſioners make a Decree for the Aſſeſſment of every Perſon in Proportion. *Cal.* 82. 10 *Co.* 143. *a.*

And it is ſufficient to charge the viſible Owner or Occupier; for if he is not liable for the Whole, he may be remedied by Application to the Commiſſioners. *Cal.* 111.

So alſo the Aſſeſſment may be charged in general upon ſuch a Town, who may afterwards apportion it among themſelves. *Cal.* 96, 97.

Or the Commiſſioners may afterwards make a Decree for apportioning it. *Cal.* 96, 97.

[An Order to levy Nine-pence *per* Acre to be paid to the Clerk, to be applied towards defraying Charges in and about the Execution of the Commiſſion, is good. *Level of Hull's Caſe, H.* 13 *G.* 2. *Str.* 1127.]

But an Aſſeſſment upon a Town in general, if it be not afterwards apportioned, is not good. *R.* 10 *Co.* 143. *a. R.* 2 *Cro.* 336. 2 *Bul.* 197. *R. Mo.* 825.

Nor

Nor an Aſſeſſment upon all the Lands between ſuch a Place and ſuch a Place; for it muſt be upon each Part in ſeveral. *R. Eq. Ca.* 94.

So an Aſſeſſment upon one only within the Level, where others are in equal Danger, or have equal Benefit, is bad. *R.* 5 *Co.* 100. *Adm.* 10 *Co.* 143.

Or an Aſſeſſment upon a Level, with Direction to levy it upon one Perſon. *R.* 2 *Cro.* 336.

If an Aſſeſſment be irregular, Equity does not aid it. *R. Eq. Ca.* 94, 5.

(E. 3.) When the Charge ſhall be upon the Owner.

If a Man be bound by Tenure to the Repair of a Wall, Sewer, *&c.* he ſhall be charged alone. *Cal.* 112. 10 *Co.* 139. *b.* 140.

And every one will be bound to whom ſuch Land comes. *Cal.* 90.

If *A.* and all his Anceſtors have Time out of Mind repaired, it is Evidence of a Tenure to repair. *Cal.* 89.

So a Corporation may be bound by Cuſtom to repair without ſhewing any Lands by reaſon of which, *&c.* *Cal.* 88.

So, if *A.* and others drain a Level, and are allowed a third Part of the Level, and thereupon agree to repair the Banks of the Whole, they will be charged to do it; tho' thoſe, who demand it, are not Parties or Privies to the Agreement. *R. Hard.* 169.

So a Man may be bound by his Covenant to repair. *Cal.* 90.

And if the Covenant be for him and his Heirs, and Aſſets deſcend, the Heir will be bound. *Cal.* 90.

So, if no one be chargeable by Tenure, Preſcription, or Cuſtom to repair, the Owner of the Wall, Bank, or other Defence may be charged for it. *Cal.* 88, 91.

Or he, who has Lands adjoining: for a Bank, Wall, *&c.* againſt the Sea belongs to him, who has Land adjoining. *Cal.* 8.

So, a Man, who has the Uſe or Profit of the Wall, *&c.* or other Defence, may be charged to it: As, if a Man has Security by ſuch Defence, in his Ferry, Crane, Piſchary, *&c.* *Cal.* 91, 92.

But a Man cannot be bound by Preſcription to the Repair, *&c.* unleſs it be ſhewn that he has Land *Ratione cujus, &c.* *Cal.* 88.

Tho' he has always repaired, and alſo his Anceſtors; for it is only Evidence that their Land is liable. *Cal.* 88.

So a Man cannot be charged as Owner, or having the Uſe, *&c.* except where all others who have the Uſe or Profit, *&c.* are alſo charged in Proportion. *Cal.* 92. *Vide Ante*, (E. 2.)—*Poſt*, (E. 5.)

(E. 4.) When upon the Level.

But where no One appears to be chargeable by Tenure, Preſcription, Cuſtom or Covenant, the Charge ſhall be impoſed upon the Level. *Cal.* 113.

Or, if Land liable by Tenure, Preſcription, Cuſtom, *&c.* be ſurrounded, or loſt. *Cal.* 113.

Or, if Land liable by Tenure, *&c.* eſcheat. *Cal.* 113.

So, if Land liable by Tenure, Cuſtom, *&c.* is not ſufficient, the Reſidue ſhall be charged upon the Level. *Cal.* 114, 115. 10 *Co.* 139. *b.*

Or the Hazard is manifeſt, whereby, if a Remedy be not immediately applied beyond what the Land liable can ſupply, the whole Country, *&c.* will be ſurrounded. *Cal.* 114. 10 *Co.* 139. *b.*

So, if Damage happens by inevitable Accident without the Fault of the Owner of the Land liable, *&c.* the Charge ſhall be upon the Level: As, if it be by an extraordinary Tide or Flood. *Cal.* 114. *R.* 10 *Co.* 139.

So the Charge of a new Wall, Sewer, or other Work ſhall be upon the Level, *&c.* *Cal.* 115.

And alſo the Maintenance of it afterwards. *Cal.* 115.

(E. 5.) Who liable within the Level.

All Perſons who have Lands and Tenements within the Level, or Profit *apprendre* are liable to the Tax aſſeſſed upon the Level; if they may have Benefit by the Repair, or Prejudice by the Non-Repair.

As, if they have Land, Meadow, Marſh, Mill, Wood, *&c.*

Tho' it be his Glebe. *Cal.* 100.

Tho' it be Copyhold. *Cal.* 101.

So, Land of the King, an Eccleſiaſtical Perſon, *&c.* *Cal.* 100.

So none can be exempt by Cuſtom or Preſcription. *Cal.* 177.

So a Man who has a Common, Rent, *&c.* or other Profit *apprendre* out of Land, may be charged to the Tax upon the Level. *Cal.* 105, 107.

The Lord of a Manor for his Quit-Rents, Rents of Aſſiſe, *&c.* *Cal.* 108.

So a Man who has Common of Turbary, Piſchary, *&c.* *Cal.* 105.

So any who has a Ferry. *Cal.* 105.

Or a Liberty of free Paſſage by Cuſtom, or Preſcription. *Cal.* 106.

A Park or Warren within the Level. *Cal.* 106.

So to extraordinary Repairs, which tend to the Benefit of the Inheritance, a Leſſor, or Reverſioner, or Remainder-man after an Eſtate for Life, or Years, may be aſſeſſed. *Cal.* 109, 110.

Or for a new Wall, Sluice, Sewer, *&c.* *Cal.* 110.

So to Repairs for the Benefit of the Country in general, a Charge may be aſſeſſed upon Land not liable to be ſurrounded: As, for Repair of a Publick Port, *&c.* *Cal.* 115.

So, by ſpecial Cuſtom which warrants a perpetual Charge, a Decree may be made for impoſing a perpetual Charge upon Land for Repair, *&c.* *Cal.* 158.

But Tithes, not in the Hands of a Layman, which ariſe upon Land within the Commiſſion, cannot be charged. *Cal.* 100.

So the Lord of a Manor cannot be charged for the Freehold of his Copyholds. *Cal.* 103.

Nor a Commoner after the Corn ſevered; for it is but of ſmall Value. *Cal.* 105.

A Reverſion or Remainder expectant after an Eſtate-Tail. *Cal.* 108.

Nor an Annuity; for it does not iſſue out of Land, but charges the Perſon only. *Cal.* 105.

Tho' the Annuity be paid by a Corporation, which cannot be bound, but in reſpect of their Poſſeſſions. *Cal.* 105.

Nor Proxies, Synodals, *&c.* *Cal.* 107.

Nor a Man who has only a Caſual Profit: As, a Fair, Market, *&c.* *Cal.* 106.

Or an Office, as Town Clerk, Clerk of a Market, *&c.* tho' they are confined to a Place within the Level. *Cal.* 107.

Nor a Man, who has only Title of Entry, or Action. *Cal.* 107.

Nor a Mortgagor for his Title to Redemption. *Cal.* 107.

Or a Bargainee, before Inrolment. *Cal.* 107.

Nor a Patron, Founder, *&c.* in reſpect of his Advowſon, *&c.* *Cal.* 107.

So no One can be charged for Reparation, *&c.* but where he has a Prejudice by the Nuſance, *&c.* or a Benefit by the Reformation. *R.* 10 *Co.* 143.

So to Annual, or Ordinary Charges aſſeſſed upon a Level, a Reverſion or Remainder after an Eſtate for Life or Years ſhall not be charged. *Cal.* 110.

So mountainous or high Lands which cannot be ſurrounded ſhall not be charged. *Cal.* 104, 176.

So the Commiſſioners cannot impoſe a perpetual Charge upon Land for Repair, unleſs it be warranted by a Special Cuſtom. *Cal.* 158.

So every Perſon ought to be charged according to the Quantity of his Land, and in Proportion to his Profit, *&c.* 10 *Co.* 143. *Vide Ante*, (E. 2.)

(E. 6.) Remedy for Aſſeſſment.

(E. 6.) By Diſtreſs.

By Commiſſion founded on the *St.* 23 *H.* 8. 5. *The Commiſſioners may aſſeſs, diſtrain, puniſh, &c. as well within the Limits accuſtomed, or otherwiſe, or elſewhere within the Realm of England.*

And may diſtrain for Arrearages of every ſuch Collection, Tax and Aſſeſs, as oft as ſhall be expedient.

And therefore where an Aſſeſſment is made upon Lands by Authority of the Sewers, the Officer by Warrant from the Commiſſioners to him may make Diſtreſs upon the Goods of the Party for the Aſſeſſment. *Cal.* 141.

So the Collector or Officer may diſtrain without an expreſs Warrant. *Cal.* 141.

So, if an Aſſeſſment be made upon Land, liable to the Repair, *&c.* for the Repair of any Wall, Sewer, or other Defence, the Cattle of a Stranger *levant* and *couchant* upon the ſame Land may be diſtrained for ſuch Aſſeſſment. *Cal.* 145.

So a Diſtreſs may be taken upon the Goods of any one charged to the Aſſeſſment at any Place within the Limits of the Commiſſion, tho' it be not upon the Land aſſeſſed. *Cal.* 143.

So at any Place within the Kingdom. *Cal.* 144.

So by the *St.* 7 *Ann.* 10. The Commiſſioners, or any ſix of them, by Warrant under Hand and Seal may give Authority to any Perſon to levy Money by them aſſeſſed on Lands chargeable with ſuch Seſs, by Diſtreſs and Sale of the Goods of the Perſon not paying, and the Overplus, after the Charges of Diſtreſs and Sale, ſhall be returned to the Owner.

So, before that Statute, by expreſs Warrant upon an Ordinance made by the Commiſſioners for the Sale of them. *Cal.* 149. *R. Al.* 92.

But the Goods of a Stranger cannot be ſold for an Aſſeſſment upon *A.* tho' *levant* and *couchant* upon his Land. *Cal.* 145, 151.

So the Goods of a Stranger cannot be diſtrained for an Amerciament upon *A.* for Non-payment of a Tax charged upon his Land, liable to the Repair of a Wall, *&c.* for Default of Repair, tho' *levant* and *couchant* upon the ſame Land. *Cal.* 145.

(E. 7.) By Fines, Amerciaments, *&c.*

If a Man aſſeſſed by the Authority of a Commiſſion neglects to pay at the Time limited, he may be amerced for it. *Cal.* 134, 135.

So, if a Collector, Expenditor, or other Officer, neglect his Duty, he may be fined for it. *Cal.* 134.

(E. 8.) By Sale of Lands. When Land may be ſold.

So by the *St.* 23 *H.* 8. 5. If any aſſeſſed, *&c.* for any Lands within the Commiſſion do not pay, *&c.* according to the Ordinance of the Commiſſioners, the ſaid Commiſſioners may decree the Lands from the Owner and his Heirs to any Perſon in Fee, in Tail, for Life, or Years, for Payment of ſuch Lot.

And therefore, for Non-payment of a Seſs charged upon the Land within the Commiſſion, the Commiſſioners may ſell the Land. *Cal.* 161.

So, if a Man be bound by Tenure to pay ſo much *per Annum* for Repair of the Sewers, and the Commiſſioners make a Decree that he pay it at ſuch a Day, for Non-payment they may ſell the Land. *Cal.* 162.

So, if an Aſſeſſment be aſſeſſed upon a *Vill, &c.* in general, and afterwards by Decree diſtributed among the Owners of the Lands within the *Vill*, for Non-payment they may be ſold. *Cal.* 162.

So all Lands, Tenements, and Hereditaments within the Commiſſion, chargeable to the Seſs, may be ſold for Non-Payment. *Cal.* 162, 163.

And now, by the *St.* 7 *Ann.* 10. The Commiſſioners may decree a Sale of Copyhold Lands in the ſame Manner as Freehold for Non-Payment of the Lot aſſeſſed on them, for ſuch Eſtate as the Owner had in them or any claiming in Remainder under him.

Provided, he, to whom the Sale is made, before Entry or Perception of the Profits, agrees with the Lord for his Fine, who ſhall thereon admit him Tenant.

But

(E. 9.) When not.

But the Commiſſioners cannot ſell Land for other Cauſe, except for Non-Payment of the Aſſeſſment: As, for not repairing of a Wall, &c. which he ought to repair by Tenure, Preſcription, &c. *Cal.* 161.

So, if *A.* be bound by Tenure, &c. to pay 20 *s. per Annum* for Repair, &c. they cannot ſell the Land for Non-Payment. *Cal.* 161.

Nor for Non-Payment of a Fine, or Amerciament, impoſed by the Commiſſioners. *Cal.* 162.

So they cannot ſell Land which is not ſpecially charged: As, where the Aſſeſſment is impoſed upon a Town, &c. no Land within the Town can be ſold. *Cal.* 162.

Nor when an Aſſeſſment is impoſed upon the Land without naming the Owner, for ſome Perſon ought to be aſſeſſed for ſuch Land. *Cal.* 162.

Nor when the Land does not lie within the Commiſſion, tho' it be charged by Tenure, or Preſcription, &c. to the Repair of a Wall, or other Work which lies within the Commiſſion. *Cal.* 163.

So they cannot ſell in Fee, for an Aſſeſſment which may be ſatisfied by a Sale for Years, &c. *Cal.* 168.

(E. 10.) Who bound by a Sale.

By the *St.* 23 *H.* 8. 5. A Decree by the Commiſſioners for the Sale of Land on Non-Payment of the Seſs, made and ingroſſed in Parchment, and certified under their Seals into *Chancery* with the King's Royal Aſſent to the ſame, ſhall bind all Perſons, who at the Making of the Decree had Intereſt in ſuch Lands in Poſſeſſion, Reverſion, or Remainder, their Heirs and Feoffees, and not to be reformed but by Authority of Parliament.

And the ſame Decrees ſhall bind the Lands of the King, as well as of any other Perſon, and their Heirs, for ſuch their Intereſt, or any caſual Profit whatſoever.

And by this *Stat.* the Iſſue in Tail will be bound by a Sale of the Land of his Anceſtor in Tail. *Cal.* 166.

So by ſuch a Decree a *Feme Covert*, Infant, and *Non compos*, will be bound. *Cal.* 167.

So by the *St.* 13 *El.* 9. Decrees being written in Parchment indented under Seal of the Commiſſioners, tho' not certified into *Chancery*, or having the Royal Aſſent, ſhall continue in Force, tho' the Commiſſion be ſuperſeded or determined, 'till altered by ſubſequent Commiſſioners.

But by a Sale of the Land of a Parſon, Vicar, Dean, Biſhop, &c. ſeiſed in Right of his Church, his Succeſſor is not bound; for by the *St.* 1 & 13 *El.* they are reſtrained from an Alienation that binds the Succeſſor. *Cal.* 166.

So for Non-Payment of a Joint-tenant, or Tenant in Common of his Part of an Aſſeſſment, only his Moiety of the Land ſhall be ſold. *Cal.* 167, 168.

(F) Account of Officers.

BY Commiſſion upon the *St.* 23 *H.* 8. 5. *The Commiſſioners may aſſign faithful Keepers, Bailiffs, Surveyors, Collectors, Expenditors and other Officers for the Conſervation, Reformation, or making the Premiſſes: And may hear the Accounts of all Collectors and other Miniſters for laying out Money, &c. for repairing, reforming Walls, Ditches, Sewers, &c.*

And every Commiſſioner ſhall have 4*s.* per *Day while he labours in Execution of the Commiſſion: And one Clerk to be aſſigned* 2 *s* per *Day of the Rates, &c. aſſeſſed: And the Commiſſioners have Power out of the ſaid Rates, &c. to aſſign to the Clerk reaſonable Sums for writing Books, Proceſs, &c. and to Collectors, Expenditors, &c. as they or any ſix think reaſonable.*

(G) Traverſe of a Preſentment.

IF any be aggrieved by a Preſentment before Commiſſioners of Sewers, he may traverſe the Preſentment. *Cal.* 169, 171.

But a Thing done by the Commiſſioners by their Survey is not traverſable; for they do that as Juſtices, and it is the Act of the Court. *Cal.* 172.

So, if they fine any for a Contempt in Court, it cannot be traverſed. *Cal.* 172.

So the Traverſe ought to be taken before Decree of the Commiſſioners. *Cal.* 172.

(H) Decrees of the Commiſſioners.

(H. 1.) What good.

BY Commiſſion upon the *St.* 23 *H.* 8. 5. *The Commiſſioners may make Statutes, Ordinances, and Proviſions for the Safeguard, Redreſs, &c. of the Premiſſes, &c. after the Laws and Cuſtoms of Romney Marſh, &c. after their own Wiſdoms and Diſcretions.*

And by the *St.* 23 *H.* 8. 5. They may make Laws, Ordinances, and Decrees, and do every Thing mentioned in theirCommiſſion, according to the true Meaning of the ſame; and the ſame Laws, *&c.* to reform, repeal and amend, as the Caſe ſhall require.

And therefore the Commiſſioners may make Rules, Orders, and Decrees, in all Caſes within their Authority and Commiſſion.

In what Caſes they have Juriſdiction, *Vide Ante,* (C. 1, &c. D. E. 1, &c.)

And the Orders and Proceedings of the Commiſſioners, as well as the Commiſſion itſelf, ſhall be in *Engliſh*, and not in *Latin*. 1 *Sid.* 78.

And does not require ſo ſtrict a Form as an Indictment. 1 *Sid.* 78.

If it charges *A.* to the Repair, it need not ſay, what Eſtate he has. *R.* 1 *Sid.* 145.

(H. 2.) What not.

But a Decree by Commiſſioners will be void, unleſs it be according to Law and Juſtice; for, *according to their Diſcretion*, imports that. *R.* 10 *Co.* 140. *a.*

So they cannot purſue Laws and Cuſtoms of *Romney Marſh*, not warranted by the General Laws of Sewers, except in ſuch Places, where ſuch Cuſtoms by Uſage have been allowed. *R.* 10 *Co.* 140. *a.*

(H. 3.) Execution of Orders.

By Commiſſion upon the *St.* 23 *H.* 8. 5. The Commiſſioners are authorized *to compel by Diſtreſs, Fines, Amerciaments, and other Puniſhments, Ways, or Means, &c. all they find negligent or rebelling in the Works, Reparations, &c. or negligent in the due Execution of the Commiſſion.*

(I) Remedy for Default of the Commiſſioners.

(I. 1.) *By Certiorari.*

IF the Commiſſioners make an Order in a Matter out of their Juriſdiction, the Order may be removed by *Certiorari* into *B. R.* andquaſh ed. *R.* 2 *Cor.* 336. *R.* 1 *Vent.* 67.

And, if the Commiſſioners proceed after a *Certiorari* allowed, an Attachment ſhall go againſt them, and they ſhall be fined for their Contempt. 1 *Lev.* 288. 1 *Vent.* 67. 1 *Mod.* 44. *Ray.* 186.

Tho' by the *St.* 13 *El.* 9. The Commiſſioners ſhall not be compelled to return any of their Ordinances, Laws, or Doings, or ſuffer in their Body, Lands, or Goods for that Cauſe; for this does not relate to Returns to be made upon *Certiorari*, but to the Return of their Decrees in *Chancery*. *R.* 1 *Lev.* 288. 1 *Vent.* 67.

So, if the Contempt be outrageous, they may be impriſoned. 1 *Vent.* 66. *R.* 2 *Cro.* 336.

Or indicted for a *Præmunire*. *Per Twiſd.* 1 *Mod.* 44. *R.* 2 *Cro.* 336.

So a *Certiorari* lies to remove an Order for appointing or removing a Clerk, *&c.* 2 *Mod. Ca.* 331.

And, if the *Certiorari* be quaſhed, another may be granted. 2 *Mod. Ca.* 331.

But where an Order is made for Repair upon an Inquiſition, finding that he ought to repair, the Court will not grant a new Trial, or quaſh the Order, except where the Party conſents to the Repair in the mean Time, and if found that he ought not, he ſhall be reimburſed. 1 *Sid.* 78.

So, if an Order be good in Part, it ſhall be confirmed for ſo much, tho' it be quaſhed for the Reſidue. 1 *Sid.* 145.

So a *Certiorari* cannot be demanded of Right, but ſhall be in the Diſcretion of the Court upon proper Cauſe. 2 *Mod. Ca.* 331.

[Iſſues ſet by a Judgment of the Commiſſioners, may be diſcharged on Motion, though a *Certiorari* would not lie originally to remove their Order. *Rex* v. *Biſhop, in Sc. P.* 1720. *Bunb.* 61.]

[If Orders are removed by *Certiorari*, and Commiſſioners offer to try any Iſſue Defendant will take, which he refuſes, the Court will not thereupon grant *Procedendo*, but they will not file the Orders, till the Objections are firſt debated, that they may have it in their Power to ſend them back. *Rex* v. *Cann, H.* 20 *G.* 2. *Str.* 1263.]

(I. 2.) By Action.

So an Action lies againſt the Commiſſioners, or thoſe who act by their Precept, if they do any Thing out of their Authority. *Cont. Mo.* 825.

SHEEP EXPORTED.

Vide Juſtices, (S. 10.)

SHERIFF.

Vide Viſcount.

Sheriff's Court.

Vide County, (C. 1, &c.)—*Courts*, (O. 4.)

Sheriff's Torn.

Vide Leet, (A. B.)

SHIP.

Maſter of ——

Vide Merchant, (E. 5, 6.—*Navigation*, (I. 4.)

Navigation of ——

Vide Navigation, (I. 1, &c.)

SHIRE.

Vide County.

SHOOTING.

Vide Juſtices of the Peace, (B. 43.)—*Leet,* (L. 14.)

SIGNET.

Vide Patent. (C. 6.)

SIGNIFICAVIT.

Vide Excommengement, (B. 3, &c.)

SIGN MANUAL.

Vide Patent (C. 7.)

SILVER MINES.

Vide Waife, (H. 1.)

SIMONY.

Vide Eſgliſe, (N. 3.)

SINGLE BILL.

Vide Obligation, (C.)

SLANDER.

—— of a common Perſon.

Vide Action upon the Caſe for Defamation, (D. 1, &c.)

—— of a Peer.

Vide Action upon the Caſe for Defamation, (B. 1, &c.)—*Libel,* (C. 4.)

—— of a Title.

Vide Action upon the Caſe for Defamation, (C. 1, &c.)

SOCAGE.

Vide Gardian (B. 1, &c.)—*Homage,* (H.)

SOLDIERS.

Vide Prærogative, (C. 2.)—*Uſes*, (N. 2.)

——departing without Licence.

Vide Juſtices, (S. 8.)

SOLICITOR.

Vide Attorney, (B. 1, &c.)

SOLVIT AD DIEM.

Vide Pleader, (2 W. 29.)

SORCERY.

Vide Juſtices, (S. 13.)

SOULS.

Cure of ——

Vide Eccleſiaſtical Perſons, (C. 15.)

SPEAKER.

Vide Parliament, (E. 5.—G. 14.)

SPECIAL DAMAGE.

Vide Action on the Caſe for Defamation, (D. 30.—G. 11.)

SPECIAL PLEA.

Vide Pleader, (E. 15, &c.)

SPECIALTY.

Vide Dett, (A. 4.)—*Temps*, (G. 15.)

SPEECH.

Vide Parliament, (G. 7, 8, 9.)

SPIRITUAL LORDS.

Vide Parliament, (D. 2.—G. 10.)

SPIRITUAL OFFICES.

Admiſſion to ——

Vide Prohibition, (G. 4.)

SPIRITUAL PERSONS.

Vide Diſmes, (C. 2.—E. 2, 8.)—*Pleader*, (2 S. 22.)

SPIRITUALTIES.

Guardian of ——

Vide Prærogative, (D. 26, 27.)

SPOLIATION.

Vide Diſmes, (M. 1.)

SPORTS UNLAWFUL.

Vide Juſtices of the Peace, (B. 42.)

SPRINGING USE.

Vide Uſes, (K. 7.)

STABBING.

Vide Juſtices, (M. 14.)

STALLAGE.

Vide Market, (F. 2.)

STANDING MUTE.

Vide Juſtices, (X. 2.)

STANDING SEISED.

Vide Covenant, G. 1, &c.)

STANNARIES.

Vide Courts, (L. 1, &c.)—*Waife*, (H. 2.)

STAR CHAMBER.

Vide Courts, (K.)

STATE OFFICERS.

Vide Officer, (E.)

STATUTE.

Vide Action upon Statute.—Copyhold, (N, O.)—*Forfeiture*, (C.) *Juſtices*, (S. 1, &c.)—*Parliament*, (G. 10, &c.—R. 1, &c.)—*Pleader*, (C. 76.—2 S. 1, &c.)—*Præſcription*, (F. 3.)—*Prohibition*, (F. 8.)

Expoſition of Statutes.

Vide Parliament, (R. 10, &c.)

Recital of a Statute.

Vide Action upon Statute, (G, H, I.)—*Pleader*, (2 S. 3.)

Repeal of a Statute.

Vide Parliament, (R. 9.)

Statute of Diſtributions.

Vide Chancery, (3 D. 1.)

Statute againſt Gaming.

Vide Pleader, (2 W. 26.)

Statute of Limitations.

Vide Chancery, (I. 1.—4 W. 17.—*Temps*, (G. 1, &c.)

Statute of Uſes.

Vide Uſes, (B. 1, 2.)

STATUTE MERCHANT.

Vide Statute Staple.

STATUTE-STAPLE.

(A) Statute-Merchant and Staple; how bound by it.

BY the *St.* 11 *Ed.* 1. *de Acton Burnell*, a Merchant may cauſe his Debtor to come before the Mayor of the *Staple*, *&c.* and make Recogniſance of his Debt, which ſhall be entred on the Roll with the Seal of the Debtor and the King, in Cuſtody of the Mayor, *&c.*

By the *St. de Merc.* 13 *Ed.* 1. He ſhall come before the Mayor, *&c.* or other ſufficient Men ſworn thereto, if the Mayor, *&c.* cannot attend, and acknowledge his Debt and Day of Payment: And the Recogniſance ſhall be inrolled and the Roll double, one Part to remain with the Mayor, *&c.* the other with the Clerk thereto named: And the Clerk ſhall make an Obligation, to which the Seal of the Debtor ſhall be put with the King's Seal, *&c.* of which the one Part ſhall remain with the Mayor, *&c.* the other with the Clerk.

By *which Statutes*, the Mayor with the Conſtables of the *Staple* may take Recogniſances of Merchants of the *Staple* for Merchandize only of the ſame *Staple*, and not of others. *Vide the St.* 23 *H.* 8. 6.

The Clerk of the *Staple* ſhall be named by the King, who may diſcharge him and name another at his Pleaſure. *F. N. B.* 165.

Or the King *ex Gratia* may iſſue a Writ out of *Chancery* to the Mayor, Bailiffs, *&c.* to diſcharge him and chooſe another, where he does not dwell in the Town, or cannot attend his Office. *F. N. B.* 164. *E.*

Or, if he has not Lands ſufficient to anſwer for Miſconduct. *Ibid.*

If the Statute be not made purſuant to the Statutes in any material Part, it will be void: As, if there be not two Parts ſealed. *Jon.* 52. *R. Cro. El.* 233, 355. *Bridg.* 19.

Or with the Seal of the King and the Party. *Win.* 84. *R. Mo.* 405.

If it be not before the Mayor of the Town appointed to be the *Staple*. *Dal.* 73. *Bridg.* 19.

Tho' he alledges a Preſcription to take it, tho' this be Evidence that it was appointed by the King to be of the *Staple*. *R. Dal.* 73.

If it be before the Attorney or Deputy of the Mayor. *Per Jon. Win.* 83.

Or before one Bailiff, where there are two; for both make but one Officer. *Win.* 83, 84.

If it be not inrolled. *Win.* 84.

So by the *St.* 23 *H.* 8. 6. No Mayor, *&c.* of *Staple* ſhall take any Recogniſance unleſs between Merchants of the ſame *Staple* for Merchandize of the ſame *Staple*, lawfully bought and ſold between them, on Pain of 40*l.*

But the Omiſſion of a Circumſtance not material does not vitiate: As, if it does not particulariſe any Day of Payment; for then it ſhall be paid preſently. *R. cont. Jon.* 1. *R. acc. per* 3 *J. Jon.* 52. *Win*, 83. 1 *Ch. R.* 28. *Bridg.* 19.

If it be inrolled, tho' not by the Hand of the Clerk. *Win.* 83.

If the Party be not a Merchant. *Ibid.*

So the Conuſee may ſay, that the Conuſor came before the Mayor of *L.* without ſaying any Thing of the Statute of *Acton Burnell*. *R. Dal.* 73.

So a Statute does not need a Delivery; for it is Matter of Record. *Cro. El.* 494.

If a Statute be void, a *Superſedeas* of the Extent may iſſue. *Jon.* 1.

Or the Party may be relieved by *Audita Querela*. *Jon.* 52. *R. Cro. El.* 233, 355. *Vide Audita Querela*, (A.)

So, if a Statute for Want of a Seal, *&c.* be void as a Statute, it may be ſued as an Obligation. *R. Cro. El.* 355, 494, 544. *Mo.* 405. *Gould. pl.* 137.

(B) Recognizance.

BY the *St.* 23 *H.* 8. 6. The Chief Juſtice of *B. R.* or *C. B.* and out of Term the Mayor of the *Staple* at *Weſtminſter* and the Recorder of *London* may take Recogniſances under the Seal of the Party acknowledging, and the Seal which the King ſhall appoint, and the Seal and Name of the Chief Juſtice, *&c.* before whom acknowledged.

The King ſhall aſſign one in the City of *London*, who by himſelf or Deputy ſhall write and inrol the Recogniſance in two Rolls indented, one to remain with the Juſtice who took it, the other with the Writer.

And at the Requeſt of the Creditor, his Executor or Adminiſtrator ſhall certify the Recogniſance under his Seal *into Chancery*, on which the Conuſee, *&c.* ſhall have like Proceſs, Execution and Advantage as on a Statute-Staple. *Vide* for this *Lut.* 430.

But it is ſufficient, if it be found by Verdict, that *B. recognovit ſe debere* 200*l.* without ſaying by Obligation, or under Seal, or *ſecundum Formam Statuti*; for it ſhall be intended in a Verdict of *Lay-Gens. R.* 4 *Co.* 65. *b.*

As to other Recogniſances, *Vide in Obligation*, (K.)

(C) In what Manner a Statute, or Recogniſance binds.

A Statute or Recogniſance, is a preſent Duty.

If a Statute, Recogniſance, or *Elegit*, be extended, a Reverſion is left in the Conuſor. *Co. L.* 22. *b.*

So, if one Statute, *&c.* ſubſequent to another be extended, the Conuſee has an Intereſt in the Nature of a Reverſion. *Semb. per Ventris*, 2 *Vent.* 326. *Vide Poſt*, (E. F.)

And if both the Statutes are extended and aſſigned to the ſame Perſon, the prior Intereſt will be merged. 2 *Vent.* 327. *Vide Surrender*, (F.)

(D) Execution upon a Statute or Recogniſance; In what Manner ſued.

(D. 1. Before the Mayor, &c.)

BY the *St. de Act. Burn.* 11 *Ed.* 1. *& de Merc.* 13 *Ed.* 1. If the Debtor does not pay, *&c.* the Creditor ſhall bring his Obligation to the Mayor, *&c.* who ſhall incontinent cauſe the Moveables of the Debtor to the Amount of the Debt to be ſold and delivered to the Creditor by the Praiſement of honeſt Men, and the King's Seal ſhall be put to the Sale, *&c.*

And if the Mayor find no Buyers, he ſhall deliver the ſaid Moveables to the Creditor at a reaſonable Price, *&c.*

And the Mayor may cauſe the Body of the Debtor (if Lay) to be committed to the Priſon of the Town till he agree the Debt.

And therefore the Mayor may make Execution, where the Conuſee lives and has Lands and Goods within his Juriſdiction. *F. N. B.* 131. *D.*

(D. 2.) Out of Chancery.

(D. 2) How the Recogniſance ſhall be certified.

By the *St. Act. Burn.* 11 *Ed.* 1. *& Merc.* 13 *Ed.* 1. If the Debtor have no Moveables, of which the Debt may be levied, or cannot be found within the Juriſdiction of the Mayor, he ſhall ſend the Recogniſance under the King's Seal into *Chancery*, and the Chancellor ſhall direct a Writ to the Sheriff to ſeiſe the Moveables, or the Body of the Debtor (if Lay) and make him agree the Debt in the ſame Manner as the Mayor if he had been in his Power.

So by the *St. de Merc.* 13 *Ed.* 1. If the Debtor agree not the Debt in a Quarter of a Year by Sale of his Goods and Lands, all his Lands and Goods ſhall be delivered to the Merchant by reaſonable Extent to hold till the Debt be levied.

By the *St.* 27 *Ed.* 3. 9. The Quarter of a Year is ouſted; but Execution ſhall be on a Statute-Staple as on a Statute-Merchant.

And therefore upon a Statute-Staple, or Merchant, if Execution cannot be made within the *Staple*, the Recogniſance ſhall be certified by the Mayor into *Chancery* under his Seal. *F. N. B.* 130. *C.*

And upon a Statute-Merchant a *Capias* ſhall iſſue out of *Chancery* returnable in *B.R.* or *C. B.* 2 *Vent.* 326. *F. N. B.* 130. *G.* *Cro. Car.* 451.

Tho' a *Capias* upon a Statute-Staple ſhall be returnable in *Chancery* only. *F. N. B.* 131. *D.* *Cro. Car.* 451.

So a Certificate ought to be made under the Seal of the Deputy for ſealing Obligations of Statutes. *F. N. B.* 130. *F.*

If the firſt Certificate omits Part of the Obligation, whereby the Conuſee cannot have Execution, upon *Affidavit* a Writ ſhall go to the Mayor to make another Certificate. *F. N. B.* 132. *B.*

So, if the Chancellor die or be removed before the Obligation upon the firſt Certificate be delivered into Court, if the Name of the Chancellor be mentioned. *F. N. B.* 132. *B.*

If the Mayor, *&c.* refuſe to certify, the Conuſee may have a Writ to him to make the Certificate. *F. N. B.* 130. *C.* 131. *D.*

And if he ſtill refuſe, he ſhall have an *Alias*, *Pluries*, and Attachment. *F. N. B.* 130. *D.* 244. *E.*

So a Recogniſance upon the *St.* 23 *H.* 8. 6. ſhall be certified in the ſame Manner by the Clerk of the Inrolment, as a Statute-Staple by the Mayor. *Lut.* 430.

But, if a Recogniſance was certified before, it ought not to be certified again, without a ſpecial Writ for that Purpoſe, upon an *Affidavit* that Execution never was ſued. *F. N. B.* 130. *D.*

So Execution in other Manner than the Statute directs will be void: As, if a *Capias* iſſues out of *C. B.* without a Certificate into *Chancery*, *&c.* 2 *Vent.* 326.

So, if the Conuſee in a Statute-Merchant dies after a Certificate and a *Capias* upon which the Conuſor is returned *Non inventus*, the Executor of the Conuſee ſhall not have an *Extendi facias*, but muſt have a new Certificate and *Capias*. *Cro. Car.* 451.

So, after an Extent ſued upon a Statute-Staple, if the Conuſee, *&c.* die, the Executor muſt begin *de novo*. *Per* 3 *J. Cro. cont. Cro. Car.* 451.

(D. 3.) Execution out of Chancery.

(D. 3.) By *Levari.*

After the Recogniſance certified into *Chancery*, if the Recogniſor be an Eccleſiaſtical Perſon, a *Levari facias* ſhall be awarded to levy the Debt of his moveable Goods; for his Body ſhall not be taken. *F. N. B.* 131. *D.* *Reg.* 298. *b.* 300. *F. N. B.* 265. *D.* 266. *A.*

If Part of the Debt be levied by *Levari facias*, an *Alias Levari facias* may iſſue for the Reſidue. *Reg.* 299. *b.* *F. N. B.* 265. *H.*

A *Levari facias* againſt a Clerk may be directed to the Sheriff, if he has a Lay-fee: otherwiſe it ſhall be to the Biſhop of the Dioceſe, where his Benefice lies. *F. N. B.* 266. *A. B.*

Or, if he has Benefices in ſeveral Dioceſes, there may be a Writ for Part to one Biſhop, and another for the Reſidue to the other Biſhop. *F. N. B.* 266. *A.*

And when the Biſhop's Power was taken away, his Tithes might be taken by the Sheriff upon an *Elegit*. *Hard.* 65.

So, by the Common Law, upon a Recogniſance in *Chancery*, a *Levari facias* lies within a Year againſt the Recogniſor, tho' Lay, for the Money mentioned in the Recogniſance *de Terris et Catallis levand'*. *F. N. B.* 265. *D.* *Reg.* 298. *b.*

But after a Year he must have Debt upon a Recognisance at the Common Law; and now by the *St. W.* 2. 45, a *Scire facias*. *Reg.* 298. *b.*

And in Lieu of a *Levari facias* by the *St. W.* 2. 18. he shall have an *Elegit*. *Reg.* 299. *a.*

If the Sheriff does not execute or return the *Levari facias*, there shall be an *Alias*, *Pluries*, and upon that an Attachment against the Sheriff. *F. N. B.* 265. *F.*

(D. 4) By *Capias si Laicus.*

If the Recognisor be a Layman, a *Capias si Laicus* shall be awarded against him out of *Chancery*: which upon a Statute-Staple shall be returned in *Chancery* only. *F. N. B.* 131. *D.*

The *Capias* upon a Statute-Merchant may be returned in *B. R.* or *C. B.* *F. N. B.* 130. *H.*

So a *Capias* upon a Recognisance before a Chief Justice, *&c.* by the *St.* 23 *H.* 8. shall be returned in *Chancery*. *Lut.* 430.

If a Man be in Prison upon a Statute-Merchant, he shall have Sustenance with Bread and Water out of his Goods. *F. N. B.* 133. *C.*

And, if the Mayor or Sheriff refuse it, a Writ shall be directed to him for that Purpose. *Ibid.*

(D. 5.) By *Extendi facias.*

Upon a Statute-Staple the *Capias si Laicus* also commands the Sheriff *quod omnia Terras et Catalla, &c. per Sacramentum, &c. juxta verum Valorem extendi et appreciari faciat, et prædicto* (the Conusee) *liberari, &c.* *F. N. B.* 131. *D.*

Upon a Statute-Merchant after the *Capias si Laicus* returned, an *Alias Capias* issues, reciting the first Writ and Return, which also commands *quod Corpus, &c. in Prisona custodiri faciat, ita quod per unum Quarterium Anni vivat de suo, et habeat omnia Bona et Terras deliberat' ut per se et suos de Debito satisfaciat, et si non, &c. tunc omnia Bona Terras et Tenementa* (to the Conusee) *liberari per rationabile Pretium et Extent' tenend', &c.* *Reg. Jud.* 8.

And afterwards a *Pluries Capias* to the same Effect. *Reg. Jud.* 9.

If upon the first *Capias si Laicus* the Sheriff commands the Bailiff of a Liberty, who arrests the Conusor, an *Alias Capias* goes, only to take the Goods and Lands. *Reg. Jud.* 68. *a.*

And, if all the Goods and Lands are not taken upon the first Writ, there may be another Writ for the other Goods and Lands reciting the first. *Reg. Jud.* 68. *b.*

[After an Extent on a Statute into one County, and a *Liberate* returned and filed, the Conusee may have an Extent into another County, if the Prayer for the second Extent was entered at the Time the first Extent was taken out; otherwise not. *Oates* v. *Robinson*, *T.* 7 *G.* *Str.* 461. *Fort.* 373.]

[And the Chancellor will give Leave to enter the Prayer *nunc pro tunc*. *Ibid.*]

If he has no Lands but in a County *Palatine*, the Statute shall be transmitted thither out of *Chancery* to have Execution. *F. N. B.* 132. *A.*

If he purchase Lands after the Acknowledgment of the Statute, they also shall be extended. *Win.* 83.

After a Writ of *Extent*, the Sheriff shall take the Conusor, shall extend and appraise his Lands and Goods, and shall make Return of the Extent and Appraisement to the *Chancery*. *F. N. B.* 131. *D.* *Vide Execution*, (C. 14.)

So he shall extend a Rent-Charge, or other Rent, tho' the Statute speaks only of Goods and Lands. *R. Mo.* 32.

So he may seise to be appraised, before Inquisition found. *R. Mo.* 563.

The Inquisition ought to find the Certainty of the Conusor's Estate; for if it says, *quod fuit seisitus vel possessionatus*, it will be insufficient. *Dy.* 299. *a. in Marg.*

So, if it finds, that the Conusor is dead, *et Tempore Recognitionis fuit seisitus de Manerio de B.* without saying, of what Estate; for if he was seised for Life or in Tail, the Land was not extendible after his Death. *Dy.* 299. *a.*

If it finds, that he was possessed of a Term of such a Date, *&c.* which is mistaken, it will be bad. *R. Cro. El.* 584.

Or for a Term *diversorum Annorum adhuc ventur'*, without shewing the Commencement or Time of the Term. *R.* 4 *Co.* 74.

If

If it finds, that he was ſeiſed of a Tenement, it is bad, without ſhewing how many Houſes, Lands, *&c.* *Mo.* 8.

But an Inquiſition need not find a Certainty, of which it cannot be informed: And therefore, if it finds the Poſſeſſion of a Term *adhuc ventur'*, it is ſufficient, tho' it does not ſay, when it commenced, or for how many Years. *R. Cro. El.* 584. *Acc.* upon a *Fieri facias*, but *cont.* in an Extent. 4 *Co.* 74.

(D. 6.) *Liberate.*

After an Extent returned a *Liberate* ſhall go to the Sheriff, reciting the *Extendi facias* and Return, and commanding, that he deliver the Goods and Lands to the Conuſee, *ſi per Extentum et Pretium illa habere voluerit.* *F. N. B.* 131. *D. Lut.* 432.

Till a *Liberate* the Land is not veſted in the Conuſee. *Dy.* 67. *b.* *Jon.* 90.

But after a *Liberate* awarded, the Conuſee may enter without Delivery of the Poſſeſſion by the Sheriff. *Per* 3 *J. Gawdy cont. Cro. El.* 463.

And the Execution will be good; tho' the *Liberate* be not returned. *Semb.* 1 *Leo.* 280. 2 *Leo.* 13. *Dub. Godb.* 82. *Acc.* 1 *Rol.* 737. *l.* 55. *R.* 4 *Co.* 67. *a.*

And if it be returned, the Conuſee ſhall be eſtopped to ſay, He had not Poſſeſſion. *R. Sal.* 563.

But a Conuſee upon a Statute-Staple, or Merchant, may pray that the Extendors ſhall take the Land at the Value extended. *Co. L.* 290. *a.*

So a Conuſee upon a Recogniſance by the *St.* 23 *H.* 8. 6. *Co. L.* 290. *a.*

But not Tenant by *Elegit* upon a Judgment, or Recogniſance in Court. *Co. L.* 290. *a.*

Nor in Execution upon a Recogniſance by Bail. 2 *Cro.* 13.

Nor in Execution by *Elegit* upon a Recogniſance in *Chancery*. *R. cont.* 2 *Cro.* 13.

The Conuſee may pray, that the Extendors ſhall take the Land at the Value extended; any Time before his Acceptance of the Land. *Yel.* 55.

At the Day of the Return of the Writ. *R.* 2 *Cro.* 13. *Mo.* 753.

Though the Conuſor dies before the Return, and his Heir is in Ward to the King. *R. Yel.* 55.

But after agreeing to the Extent, the Prayer is too late. 15 *H.* 7. 15. *b.*

As to an Extent upon an *Elegit*, *Vide in Execution*, (C. 14.)

As to the Suit of the King, *Vide in Execution*, (B. 3, &c.)

(D. 7.) *Re-extent.* When allowed.

By the *St.* 32 *H.* 8. 5. If Lands delivered in Execution on a Judgment, Statute or Recogniſance, ſhall be evicted without Fraud or Default of the Tenant, who holds them in Execution, before the Debt and Damages are wholly levied, the Recoveror or Conuſee may have a *Scire facias* againſt the Perſon, on whom the Execution was firſt ſued, his Heirs, Executors or Aſſigns, of Lands then liable, returnable in the ſame Court forty Days after the *Teſte:* And if the Defendant makes Default, or ſhews not Cauſe, the Chancellor, or Juſtices of the Court where the *Scire facias* is returned, ſhall make a new Writ of the like Nature of the former Execution for leving the Reſidue of the Debt.

So, if the Conuſee after a *Liberate* enters, as he may, for that is *tantamount* to a Delivery in Execution. *Co. L.* 290. *a.*

If a Diſſeiſor enfeoffs the King, who grants to *A.* and afterwards grants the Seigniory to *B.* who acknowledges a Statute upon which the Seigniory is extended, and the Land eſcheats, and then the Diſſeiſee recovers, the Conuſee ſhall have a Re-extent, tho' the Land was not delivered in Execution, but the Seigniory. *Co. L.* 290. *a.*

So a Conuſee of a Recogniſance by the *St.* 23 *H.* 8. 6. if he be evicted, ſhall have a Re-extent. *Ibid.*

So the Executor or Adminiſtrator of a Recoveror, or Conuſee, ſhall have a Re-extent upon Eviction. *Ibid.*

If the Judgment be removed into *B. R.* by Error, and affirmed there, he ſhall have a *Scire facias* out of that Court. *Ibid.*

So,

So, if the first Extent or Inquisition be insufficient, he may have a new Extent. *Co. L.* 290. *a.* *Dy.* 299. *a.*

(D. 8.) When not. But if by the Eviction the Party is not totally ousted of his Remedy for the Residue of his Debt, there shall not be a Re-extent: As, if a Part only be evicted. *Co. L.* 289. *b.* 2 *Cro.* 338.

If all but one Acre be evicted; for, if he has a Remedy *in præsenti vel futuro* for the Whole or Part of the Debt, he shall not have a Re-extent. *Co. L.* 289. *b.* 4 *Co.* 66. *a.*

So, if he, who extends, be ousted by a subsequent Extent upon a prior Statute, he shall not have a Re-extent; for after the former Extent satisfied, he who extended first shall have it again. *Co. L.* 289. *b.* *R.* 4 *Co.* 66. *a.* *Fulwood.*

Or, if he be ousted by a Woman who claims Dower. *Co. L.* 289. *b.* *R.* 4 *Co.* 66. *a.*

Or by a Lessee for Life or Years upon a Lease made by the Conusor before the Statute. *Co. L.* 289. *b.*

Yet by the *St.* 8 *Geo.* 25. If before or after filing the *Liberate*, it be made appear to the *Chancery*, that sufficient has not been extended or levied, *&c.* or any Lands, *&c.* be evicted, the Court may award a Re-extent, one or more, and a *Liberate* thereon.

So, after full Satisfaction upon an Extent returned and filed upon Record, there shall not be a Re-extent. *Co. L.* 290. *a.*

So, after an Extent filed, there shall not be a Re-extent, tho' several Lands are omitted. 1 *Sid.* 356.

So in no Case shall there be a Re-extent except where the first Extent was void. 1 *Sal.* 39.

(E) What Interest the Conusee shall have.

BY the *St. de Merc.* 13 *Ed.* 1. The Conusee shall have Seisin of all the Lands, *&c.*

And by the *St.* 27 *Ed.* 3. He shall have an Estate of Freehold, *&c.*

And therefore, he has *quasi* the Freehold, of which he may maintain an Assise. 2 *Vent.* 327.

So the Conusee may have *quasi* a Reversion, and if there was a prior Lease, may distrain or have Debt for the Rent. 2 *Vent.* 328. *R.* 2 *Cro.* 424, 477. *Vide Ante*, (C.)

And a Conusee must attorn to a Grant of the Reversion, as a Tenant for Life or Years. 2 *Vent.* 328.

So, if a Rent be extended, he may avow a Distress for Rent. *Dy.* 105. *b.* *Dal.* 34.

But a Conusee, in Debt for Rent, must shew the Extent and Inquisition returned upon it, and it is not sufficient to say, That it was delivered to him by Extent. *R.* 2 *Cro.* 569.

So a Conusee shall hold by Virtue of his first Extent till the Debt be satisfied, tho' Part be evicted for Life or Years, or by a former Extent, after such Estate so evicted is determined. *R.* 4 *Co.* 66. *b.*

Till the Debt with Costs be satisfied. 15 *H.* 7. 15. *b.*

So a Conusee may assign his Interest. 4 *Co.* 66. *Skin.* 263. *Vide Assignment*, (A.)

(F) How his Interest shall be determined.

BUT the Interest of the Conusee in the Land determines by his Release of the Debt. 2 *Vent.* 327.

So a Release to him, by him in the Reversion, merges his Interest. 2 *Vent.* 327.

So,

So, if the Conuſee purchaſes Part of the Inheritance, all his Intereſt is merged. 2 *Vent.* 327. 1 *And.* 266.

Or takes a Leaſe for Years of the Reverſion after an Eſtate for Years. *R. Pal.* 272.

And thereby his Intereſt is ſuſpended during the Years. *R.* 2 *Cro.* 477.

So he may ſurrender to him in the Reverſion. *Vide Surrender*, (F.)

Or forfeit his Eſtate by a Feoffment, *&c.* 2 *Vent.* 328. *Vide Forfeiture*, (A.)

So, if a Fine be levied of Land after a Statute extended, and five Years paſſed, the Intereſt of the Conuſee will be barred by ſuch Fine and Non-claim. 2 *Vent.* 329, 332. *Vide Fine*, (I. 2, 3.)

If a Conuſee purchaſes or takes a Leaſe, *&c.* of Part of the Eſtate extendible, his Intereſt, by Reaſon of the Statute, is extinguiſhed ſo intirely in the Land purchaſed or demiſed that his Extent of it is void, and a ſecond Conuſee may extend. *R. Pal.* 272.

So the Intereſt of the Conuſee ſhall be determined by Satisfaction acknowledged upon Record of the Statute. 2 *Vent.* 336.

So by Satisfaction from the Profits according to the extended Value. 2 *Vent.* 325.

Or by accidental Profits.

But an Extent ſhall not be determined as to Goods or Land by Eſcape of the Conuſor. *R.* 1 *And.* 266.

Nor by Purchaſe of Parcel of the Lands, which the Conuſor had at the Time of the Recogniſance or Statute acknowledged. *R.* 2 *And.* 171.

(G) Remedy if the Conuſee be ſatisfied.

IF the Conuſee be ſatisfied his Debt by any accidental Profit, or by Perception of the Profits, the Conuſor ſhall have a *Scire facias* againſt him *ad computandum*. 4 *Co.* 66. *b.* 2 *Vent.* 338.

And upon ſuch *Scire facias* the Conuſee ſhall account according to the extended Value, and not according to the Real Value.

And if by the extended Value the Conuſee be ſatisfied, the Conuſor ſhall have Judgment.

Or, if the Conuſor pay all that remains due upon the Account with Damages. 2 *Vent.* 338.

So, if the Conuſee be ſatisfied by Perception of the Profits, tho' not by the extended Value, the Conuſor ſhall be aided in Equity; but ſhall pay the Coſts and Damages which the Conuſee ſuſtained, tho' they exceed the Penalty of the Original Debt. 2 *Vent.* 338. *R. Hard.* 136.

And by a Bill in Equity the Conuſor ſhall compel the Conuſee to account according to the real Value by him received. 2 *Vent.* 338. *Hard.* 136.

But the Conuſor cannot enter without a *Scire facias*, tho' by Effluxion of Time the Debt and Damages may be intended to be ſatisfied according to the Value of the Lands; for the Conuſee ſhall hold, till not only the Debt and Damages, but alſo his Coſts, Labour and Expences are ſatisfied, which ought to be aſcertained by the Court. *R.* 4 *Co.* 67. *b.*

So no one ſhall have a *Scire facias* but the Conuſor: And therefore if the Conuſor, after the Recogniſance, grants a Rent-charge and the Conuſee be ſatisfied, the Grantee may diſtrain, and in *Replevin* it may be tried, whether ſatisfied or not. *R. Jon.* 456. *Cro. Car.* 598.

Vide more concerning *Statute Staple* in *Dett*, (A. 3.)—*Enfant*, (B. 4.)

STEWARD.

Vide Copyhold, (C. 5.—F. 3.—R. 5, &c.)——*Juſtices of the Peace*, (D. 7.)—*Leet*, (M. 1.)

Lord High Steward.

Vide Officer, (E. 4.)

Steward of the King's Household.

Vide Courts, (H.)

STILE.

Stile of a Court.

Vide Copyhold, (R. 8,)—*Courts*, (P. 6.)

King's Stile.

Vide Roy, (B.)

STRANGER.

(*Vide Fine*, I. 2.)

Act of a Stranger.

Vide Abatement, (H. 54.)—*Condition*, (L. 14.)

SUBJECTS.

Vide Parliament, (L. 11.—*Prærogative*, (C. 1, &c.—D. 34, 35.)—*Trade*, A. 5, &c.)—*War*, B. 6, 7.)

SUBMISSION TO AWARD.

Vide Arbitrament, (D. 1, &c.)

SUBORNATION.

Vide Justices of the Peace, (B. 103, 105.)

SUBPOENA.

Vide Chancery, (D. 1.)

SUBSIDY.

Vide Parliament, (H. 13.)

SUBSTRACTION OF TITHES.

Vide Prohibition, (G. 7.)

SUCCESSION.

Vide Biens, (D. 1.)—*Franchiſes*, (F. 16.)

SUGGESTION.

Vide Grant, (G. 9.)—*Patent*, (F. 2.)—*Prohibition*, (H. 2.)

SUIT.

Privilege of ——

Vide Attorney, (B. 17.)—*Dett*, (G. 11.)—*London*, (L. 3.)—*Prærogative*, (D. 85.)—*Privilege*, (C. 1, 2.)

Continuance of Suit.

Vide Pleader, (V. 1.)

Former Suit depending.

Vide Chancery, (I. 1.)

Surceaſing of Suit.

Vide Action upon the Caſe upon Aſſumpſit, (B. 1.)

SUIT OF COURT.

Vide Copyhold, (K. 13, 16, 17.)

Avowry for Suit.

Vide Temps, (G. 14.)

SUMMONS.

Vide Juſtices of the Peace, (C. 2.—D. 3.—*Parliament*, (C.)—*Proceſs*, (D. 1, 9.)—E. 1.)—*Sewers*, (C. 6.)

Summons and Severance.

Vide Aſſiſe, (B. 10.)

SUNDAY.

Vide Temps, (B. 3.)

SUPERSEDEAS.

Vide Audita Querela, (E. 5.—*Certiorari*, (E.—F.—H. 1, 2.)—*Chancery*, (4 Q.)—*Forceable Entry*, (D. 28.——*Pleader*, (3 B. 12.)

SUPERSTI-

SUPERSTITION.

Vide Justices of the Peace, (B. 15.)

SUPERSTITIOUS USES.

Vide Uses, (M.)

SUPPLICAVIT.

Vide Chancery, (4 R.)—*Forceable Entry*, (D. 16, 17.)

SUPPLY.

Vide Parliament, (H. 9, &c.—17.)

SUPPOSAL.

Vide Pleader, (G. 13.)

SUPPRESSION OF RIOTS, &c.

Vide Forceable Entry, (D. 8.)—*Justices of Peace*, (B. 9.)

SUPREMACY.

Vide Prærogative, (D. 17.)

SUR CONCESSIT.

Vide Fine, (E. 14.)

SUR CONUSANCE DE DROIT COME CEO, &c.

Vide Fine, (E. 9.)

SUR CONUSANCE DE DROIT TANTUM.

Vide Fine, (E. 12.)

SURETY.

Vide Bail, (E.)—*Chancery*, (4 D. 6, 15.)

—— of the Peace.

Vide Forceable Entry, (D. 16, &c.)—*Juſtices of Peace*, (B. 5, 6, 7.)

—— of good Behaviour.

Vide Juſtices of Peace, (B. 5, 8.)

SURGEON.

Vide Phyſicians, (D.)

SUR GRANT AND RENDER.

Vide Fine, (E. 13.)

SURPLUSAGE.

Vide Pleader, (C. 28, 29.—E. 12.—S. 28, 29.)

SURPRIZE.

Vide Chancery, (4 D. 22.)

SURRENDER.

(A) Surrender, What ſhall be, In Fact.

A Surrender in the Reſignation of a particular Eſtate for Life, or for Years to him in the immediate Reverſion or Remainder. *Co. L.* 337. *b.*

A Surrender ſhall be by expreſs Words, or by Operation of Law. *Co. L.* 338. *a.*

An expreſs Surrender does not require the Word *Surrender*, for any Words *tantamount* are ſufficient. 2 *Rol.* 497. *l.* 55.

As, if a Leſſee grants, that the Leſſor ſhall have his Land, or grants his Land to him. 2 *Rol.* 498. *l.* 2.

Or grants to him *totum Statum ſuum*. 2 *Rol.* 497. *l.* 35.

Or leaſes to him for his Life. 2 *Rol.* 497. *l.* 15.

Or ſays to him, *I agree you ſhall enter into the Land*. 1 *Leo.* 280.

Or, *I am content you ſhall have it*. *R. Cro. El.* 488.

So a Surrender will be good in the Abſence of him to whom made, for his Aſſent ſhall be preſumed, if it does not appear to the contrary. *Cont. per* 3 *J. Vent. acc.* and the Judgment of the 3 *J.* was affirmed in *B. R.* but afterwards reverſed in Parliament. 2 *Vent.* 199, *&c. Sho.* 297. 3 *Mod.* 297. 3 *Lev.* 284. *Ca. Parl.* 151.

What ſhall be a Surrender in Law. *Vide Poſt*, (I. 1, 2.)

(B) When without Deed.

A Surrender of an Eſtate for Life in Land, by the Common Law, might be made without Deed, or Livery, for nothing operates but the Reſtoration of the particular Eſtate to him in Reverſion or Remainder. *Co. L.* 338. *a.* 2 *Rol.* 498. *l.* 23, 40.

Tho' it was originally created by Deed. *Co. L.* 338 *a.*

So *A.* Tenant for Life, Reverſion to *B.* for Life, they might join in a Surrender without Deed; for it will be firſt the Surrender of *A.* and afterwards of *B.* 2 *Rol.* 498. *l.* 20. *R.* 2 *Rol.* 20. *Cro. El.* 269.

So a Jointenant might ſurrender to his Companion (admitting that he may ſurrender) without Deed. 2 *Rol.* 498. *l.* 43. *Vide Poſt*, (E.)

So a Leſſee for Years might ſurrender by *Parol.* *R.* 1 *Vent.* 242, 272.

[Leaſe by Deed, for any Number of Years, may be ſurrendred without Deed, by Note in Writing, without Stamp-Duty. *Farmer* v. *Rogers*, *T.* 28 & 29 *G.* 2. 2 *Wilſ.* 26.]

(C) When not.

BUT by the Common Law, an Eſtate, which lay in Grant, and could not be created without Deed, could not be ſurrendred without Deed. *Co. L.* 338. *a.*

As, a Corody, Rent, *&c.* 2 *Rol.* 498. *l.* 30.

An Office. 1 *Vent.* 297.

So, if there be a Feoffment to *A.* for Life, Remainder to *B.* for Life, Remainder in Fee to *C.* tho' the Remainder to *B.* commenced without Deed, it cannot be ſurrendred without Deed. *Co. L.* 338. *a.* *R. per* 3 *J.* 2 *Rol.* 20.

So a Leſſee for Years of a Manor could not ſurrender without Deed. *R.* 2 *Rol.* 498. *l.* 35.

So a Corporation Aggregate cannot make a Surrender of their Lands without Deed. 10 *Co.* 67. *b.*

And now by the *St.* 29 *Car.* 2. 3. No Leaſe, Eſtate, or Intereſt of Freehold, or Term of Years, or any uncertain Intereſt, not being Copyhold, in or out of any Manors, Lands, *&c.* ſhall be ſurrendred, *&c.* unleſs by Deed or Note in Writing, ſigned by the Party ſo ſurrendring, or his Agent thereunto authorized in Writing, or by Act and Operation of Law.

(D) What Eſtate may be ſurrendred.

A Surrender regularly ought to be of a particular Eſtate: As, of an Eſtate for Life or for Years. 2 *Rol.* 494. *l.* 27.

So Tenant by Statute-Staple, Merchant, or *Elegit*, may ſurrender. 2 *Rol.* 494. *l.* 44.

So a Deviſee for ſo many Years, till he receives ſo much Money, tho' he has only a Chattel and no Eſtate in the Land. 2 *Rol.* 494. *l.* 40.

So, if a Leſſee demiſes to his Leſſor for a leſs Term rendring Rent, he may ſurrender his Reverſion to his Leſſor, whereby the Rent will be extinguiſhed. 2 *Rol.* 494. *l.* 55.

So, if there be a Leſſee of a Term to commence after the Death of *A.* and a Grantee of the Inheritance makes a Leaſe for 21 Years, and then the Leſſee of the future Intereſt aſſigns to the Grantee of the Inheritance, his Intereſt will be merged. *R.* 2 *Cro.* 619.

So, a Grant of the next Avoidance will be ſurrendred by an Acceptance of a Grant of the next Avoidance *de novo*, *Semb.* 1 *Bul.* 33.

So Tenant in Dower, or by Curteſy, may ſurrender, tho' their Eſtate is created by Law. *Co. L.* 338. *a.*

So an Eſtate of a Thing, which lies in Grant, may be ſurrendred to the Terretenant, tho' it be an Eſtate in Fee: As, Tenant in Fee of a Common, Rent, &c. may ſurrender his Intereſt to the Terretenant. *Perk. S.* 585.

So the Tenant in a *Præcipe*, or other Real Action, tho' he be ſeiſed in Fee, may ſurrender his Eſtate to the Demandant without Livery. 2 *Rol.* 494. *l.* 30.

So the Tenant in a *Ceſſavit*. *Qu. Perk. S.* 585.

(E) What not.

BUT regularly a Tenant in Fee cannot ſurrender his Eſtate: And therefore the very Tenant cannot make a Surrender to his Lord. 2 *Rol.* 494. *l.* 23.

Tho' he be the very Tenant of the King. 2 *Rol.* 494. *l.* 25.

So the Diſcontinuee of Tenant in Tail cannot ſurrender to the Iſſue in Tail. 2 *Rol.* 494. *l.* 29.

So a Jointenant cannot ſurrender to his Companion. 2 *Rol.* 494. *l.* 10.

So a Tenant at Will cannot ſurrender properly. 1 *Leo.* 177, 8.

So a Right cannot be ſurrendred: And therefore a Tenant for Life being diſſeiſed, cannot make a Surrender before Entry. 2 *Rol.* 494. *l.* 49. *Co. L.* 338. *a.*

Nor a Leſſee for Years being ouſted.

Yet, if the Leſſor waives his Poſſeſſion, the Leſſee, before Entry, may ſurrender to him. *Perk. S.* 603.

So, if the Leſſee enters and aſſigns to *B.* the Aſſignee may ſurrender before Entry, for the Aſſignment gives him actual Poſſeſſion before Entry. *R.* 2 *Rol.* 495. *l.* 15.

(F) To whom it may be made.

A Surrender ought to be to him, who has the immediate Reverſion or Remainder. *Co. L.* 337. *b.*

And to him, who has the immediate Reverſion, or Remainder, a Surrender may be, whether he has it in Fee or in Tail.

So, if he has it only for Life. 2 *Rol.* 494. *l.* 12.

So a Leſſee for Years may ſurrender to him, who has the Reverſion only for Years. *R. Cro. El.* 302. *Adm.* 2 *Vent.* 327.

Tho' the Leſſee be for ſeveral Years, and the Reverſioner has it only for one Year, or a leſs Term. *Per Poph. and Fenner, Cro. El.* 302.

So, if a Statute be extended, and afterwards there is another Extent upon a later Statute, the Conuſee of the former Statute may ſurrender to him who has the Intereſt in the laſt Extent; for he has *quaſi* a Reverſional Intereſt. *Per Vent.* 2 *Vent.* 327.

And if the Intereſt in both Statutes comes to the ſame Perſon, it amounts to a Surrender of the former. *Skin.* 263.

If a Leſſee demiſes Part of his Eſtate to the Leſſor, he may ſurrender the other Part; for the Reverſion of that remains in the Leſſor. 2 *Rol.* 494. *l.* 54.

So, if a Leſſee for thirty Years demiſes for ten Years, both the Leſſees joining in a Surrender, it will be good: for it ſhall be conſtrued the Surrender of the Leſſee for thirty Years firſt, and then of the Leſſee for ten Years. *Pl. Com.* 541. *a.*

So a Surrender to an Infant will be good; for his Aſſent ſhall be preſumed till a Diſagreement appears. *R.* 2 *Vent.* 208. *Ca. Parl.* 151.

(G) To whom not.

BUT a Surrender to him, who has not any Reverſion in him, is void: As, if a Reverſion be granted to *B.* a Surrender to him by a Leſſee before Attornment, (when the Reverſion does not veſt till Attornment) is void. *Adm. Cro. El.* 803.

So,

So, if a Leſſee for Years to commence at *Michaelmas* ſurrenders before *Michaelmas* by Deed, it is void; for till *Michaelmas* the Leſſor had not any Reverſion, in which it could merge. *Co. L.* 338. *a.* *Vide Poſt*, (I. 1.)

So a Surrender cannot be made, if the Reverſion or Remainder be not immediate: As, if a Leſſee for thirty Years leaſes to *B.* for ten Years, *B.* cannot ſurrender to the firſt Leſſor. *Pl. Com.* 541. *a.*

If a Statute be acknowledged to *A.* and another to *B.* and a Fine levied by him in the Reverſion to *A.* his Eſtate is not merged; for the *meſne* Intereſt of *B.* prevents the Surrender or *Merger* of his Eſtate. *Skin.* 263.

So a Surrender to a Leſſor, who diſagrees to it, will be void. *Mar. pl.* 10. 2 *Vent.* 207.

(H) What will not be a Surrender.

SO, if a Leſſee, *&c.* reſerves to him any Part of the Eſtate, it is not a good Surrender: As, if he grants all his Term to the Leſſor, except the laſt Year, Month, or Day. *R.* 2 *Rol.* 497. *l.* 30. 498. *l.* 5. 3 *Bul.* 203, 4.

Or Leaſes to his Leſſor for his Life; for he has a Poſſibility to have it again. 2 *Rol.* 497. *l.* 5, 10.

So, if the Leſſee agrees with the Leſſor by *Parol*, that he ſhall have it rendring ſo much Rent, it is not a Surrender; for it appears that Rent was intended to be reſerved, which cannot be by *Parol* upon a Surrender, and therefore it will be only a Leaſe at Will. *R. Dy.* 251. *b.* 2 *Rol.* 497. *l.* 45. 1 *Leo.* 177.

So, if the Leſſee demiſes to the Leſſor and the Heirs of his Body, it will not be a Surrender; for a Special Occupant is appointed. 2 *Rol.* 497. *l.* 37.

So, if the Leſſee ſurrenders to the Leſſor to the Uſe of another, the Uſe cannot ariſe upon the Eſtate extinguiſhed by the Surrender. *R. Pal.* 359.

So, if the Leſſee permits the Leſſor of a Manor to hold a Court there, and ſays generally in his Preſence, *I have nothing to do here*, it is no Surrender. *Semb.* 1 *Leo.* 280. 2 *Leo.* 49.

Or, if the Leſſor ſays, *I will have ſuch a Chamber*, and the Leſſee agrees, and the Leſſor puts his Goods there, it is no Surrender of that Part, but only a Permiſſion to put his Goods there. 3 *Leo.* 224. *Vide Poſt*, (I. 2.)

So, if the Leſſee delivers his Leaſe to *A.* to deliver with all his Eſtate to the Leſſor, and *A.* does accordingly; for he cannot make a Surrender by Attorney. *R. Cro. El.* 488.

So, if a Leſſee for Years leaſes to *B.* for a leſs Term, who regrants or releaſes to the firſt Leſſee, it is no Surrender; but the firſt Leſſee ſhall have it for all the Years. *Adm. Cro. El.* 302. *R. Cro. El.* 173.

So, if a Leaſe be to *A.* for ten Years, Remainder to *B.* for twenty Years, and *B.* releaſes all his Right and Eſtate to *A.* he ſhall have it for thirty Years. *Co. L.* 273. *b.*

(I) Surrender in Law.

(I. 1.) What ſhall be.

SO it ſhall be a Surrender by Operation of Law, if a Leſſee for Life enfeoffs him in the Reverſion in Fee; for his Eſtate will be merged. 2 *Rol.* 496. *l.* 42.

So, if he grants to him *totum Statum ſuum.* 2 *Rol.* 497. *l.* 35.

So, if he enfeoffs Huſband and Wife, ſeiſed of the Reverſion in Right of the Wife. 2 *Rol.* 496. *l.* 49.

So, if Leſſee and Leſſor join in a Feoffment, it will be the Surrender of the Leſſee and the Feoffment of the Leſſor. *Pl. Com.* 140. *b.*

So a Feoffment by a Leſſee for Life to him in the Reverſion is a Surrender; tho' the Reverſioner be an Infant. 2 *Rol.* 496. *l.* 42.

So,

So, if Leſſee for Life demiſes to him in the Reverſion for the Life of the Leſſee, it will be a Surrender; tho' there be a Poſſibility of an Occupant. 2 *Rol.* 497. *l.* 15.

Or for the Lives of the Leſſor and Leſſee; for it can never revert to the Leſſee. *R.* 2 *Rol.* 497. *l.* 17.

So, if a Leſſee for Life or for Years accepts a Feoffment from Him in the Reverſion or Remainder, that amounts to a Surrender of his Eſtate. 2 *Rol.* 495. *l.* 25.

So, if there be a Feoffment to *A.* to the Uſe of himſelf for Life, and afterwards to *A.* and his Heirs, and *A.* by *Parol*, without Deed, but upon an Agreement that the Feoffor ſhall have it again, makes Livery to him upon the Land, this amounts to a Surrender of his Eſtate, and alſo to a Feoffment. *R. Dy.* 358. *a.*

So, if Leſſee for Life accepts a Leaſe from the Leſſor, it will be a Surrender. *Al.* 59.

Tho' the new Leaſe be only for Years. *Ibid.*

So, if Leſſee for Years accepts a new Leaſe from his Leſſor, it will be a Surrender in Law, for this affirms him able to make a Leaſe. *R. Pl. Com.* 106. *a.* 107. *b.*

Tho' the new Leaſe be for a leſs Term. *R. Dy.* 140. *b.* 2 *Rol.* 495. *l.* 53. 2 *Cro.* 84.

Or by *Parol*, when the firſt Leaſe was by Indenture. *Dy.* 140. *b.* 2 *Rol.* 496. *l.* 3.

Tho' the new Leaſe commence at a future Day, it will be a Surrender immediately. *R.* 5 *Co.* 11. *b.* *Cro. El.* 522. *R.* 2 *Rol.* 496. *l.* 5. *R. Mo.* 636. 2 *Cro.* 84. *Per* 3 *J. Poph.* 9.

Tho' the new Leaſe be defeazable. 2 *Rol.* 495. *l.* 40

Or upon Condition to be void, upon ſuch an Act, which is afterwards done. *Pl. Com.* 107. *b.*

So, if he accepts a Leaſe at Will. *Mo.* 637.

So, if a Leſſee for Years, to commence at *Michaelmas*, before *Michaelmas* accepts a new Leaſe to commence immediately, it will be a Surrender of the former Leaſe, tho' it was only a future Intereſt. *Co. L.* 338. *a.*

So, if before *Michaelmas* he accepts a new Leaſe to commence alſo at a future Day. *Co. L.* 338. *a.* *D. cont.* 2 *Rol.* 496. *l.* 10. *D. cont. Dy.* 58. *a.* *Per Moile and Davers cont. but Priſot acc.* 37 *H.* 6. 18. *a.* *Bro. Surrender* 21. *Acc.* 10 *Co.* 53. *a.* 67. *b.* *Acc. Cro. Car.* 502. 1 *Rol.* 728. *l.* 40. *R. Cro. El.* 522. 605.

So, if a Leſſee accepts a new Leaſe *de Veſtura Terræ*, it will be a Surrender. 2 *Rol.* 496. *l.* 20.

So, if he accepts a Grant of Common, or Rent out of the ſame Land, to commence at a certain Day within the Term. *R.* 2 *Rol.* 496. *l.* 20, 25.

Or a Leſſee for Life accepts a Grant of a Rent, Common, *&c.* out of the ſame Land for Life. *R.* 2 *Cro.* 177.

Or a Leſſee accepts a Grant of the Cuſtody of the ſame Land. 2 *Cro.* 177.

So, if a Woman, Leſſee, takes Huſband, Acceptance of a new Leaſe by the Huſband will be a Surrender. 2 *Rol.* 495. *l.* 50.

So Acceptance of a new Leaſe by *Parol* by a Corporation aggregate, which has a former Leaſe, will be a Surrender, tho' they cannot ſurrender without Deed. 10 *Co.* 67. *b.*

So, if a Leſſee for Years accepts a new Leaſe from the Guardian in *Socage*. *Semb.* 1 *Leo.* 322.

So if the Grantee of an Office accepts a new Grant of the ſame Office, it will be a Surrender. *Semb.* 1 *Vent.* 297.

So, if a Corporation Sole leaſes to *B.* who is afterwards made Head of the Corporation; as, a Biſhop, Maſter of an Hoſpital, *&c.* his Term is merged; for he cannot have the Term in his own Right, and the Freehold in another Right. *Co. L.* 338. *b.*

So, if a Woman, Leſſor, takes to Huſband the Leſſee for Years. *Co. L.* 338. *b. Semb. cont.* 2 *Cro.* 275.

(I. 2.) What not.

But if Leſſee for Life enfeoffs Him in the Remainder in Tail, it will not be a Surrender; for by the Feoffment the Remainder is diveſted. 2 *Rol.* 496. *l.* 45.

Or joins in a Fine with him in the Reverſion, or Remainder, for each gives that which he lawfully may. *Semb. Cro. El.* 688.

So, if a Leſſee reſerves any Intereſt in himſelf, it is no Surrender. *Vide Ante*, (H.)

So, if the Leſſor or Reverſioner enfeoffs the Leſſee for Years, ſince the *St.* 27 *H.* 8. to the Uſe of another, his Term is not ſurrendred, or extinguiſhed; for, by the Statute, the Intereſt of Feoffees is ſaved. *R.* 7 *Co.* 39. *a.*

Or by Leaſe and Releaſe conveys to the Leſſee and another, to the Uſe of *B. Dub.* 2 *Lev.* 127.

So, if the Leſſee accepts a new Leaſe, in Truſt for another. *Semb.* 1 *Sid.* 75.

So, if the new Leaſe be void, Acceptance by the Leſſee is no Surrender. *R.* 2 *Rol.* 495. *l.* 45. *Jon.* 405.

So, if the new Leaſe commences after the Death of *B.* it is no Surrender till *B.* dies; for he may ſurvive the firſt Term. *R.* 4 *Leo.* 30.

So, if a Leſſee acceps a Grant of a Thing conſiſtent with the Leaſe of the Land, it is no Surrender: As, if the Leſſee of a Manor accepts the Grant of a Bailiwick, or to be Steward of the ſame Manor; for it is Collateral. *R.* 2 *Rol.* 496. *l.* 30. *Qu. Mo.* 637. *R.* 2 *Cro.* 84, 176. *Hard.* 47.

Or the Leſſee of a Park accepts the Grant of Parker. *R.* 2 *Rol.* 496. *l.* 36. 2 *Cro.* 177.

Or *è contra*. *Cont. per* 2 *J.* 1 *Rol.* 83.

If the Leſſee of an Houſe accepts a Grant of the Cuſtody of the ſame Houſe. *Hard.* 47.

So, if the Leſſor grants a Rent, Common, *&c.* out of the Land to his Leſſee, without ſaying at what Time it ſhall commence, it is no Surrender; but it ſhall be intended after his Term. *R.* 2 *Rol.* 496. *l.* 16. 2 *Cro.* 177.

Or leaſes to him all his Lands in *A.* where the Lands in the former Leaſe are; for it ſhall be intended of all his other Lands. 2 *Rol.* 496. *l.* 13. 2 *Cro.* 177.

Or agrees that the Leſſee ſhall have Part of the former Lands and other Lands for a leſs Term, and that it ſhall not be a Surrender. *R.* 1 *Leo.* 303. *Cro. El.* 173.

So an Agreement between the Leſſor and a Stranger, that the Leſſee ſhall have a new Leaſe, is no Surrender. *Cro. El.* 173.

So, if the Leſſee gives Licence to the Leſſor to make Livery, it is no Surrender. *R.* 2 *Rol.* 495. *l.* 35.

Or to make a Feoffment. *Per Fitzh. Dy.* 33. *b.*

Or agrees that he ſhall make a Feoffment. *Dub. Dy.* 33. *b.* 2 *Rol.* 495. *l.* 27. *Mo.* 11.

Or be Attorney to make Livery for him. 2 *Rol.* 495. *l.* 37. *R. Mo.* 11.

So, if the King grants an Office by Patent, Acceptance of a new Patent of the ſame Office is no Surrender of the firſt. *R. Cro. Car.* 197.

So, if the King makes a Demiſe for Years, Acceptance of a new Leaſe without Recital of the former will be void, and is no Surrender. *Cro. Car.* 198.

So, if Huſband and Wife, ſeiſed for the Life of the Wife, accept a Feoffment from the Reverſioner, it will be a Surrender only during the Coverture; for the Wife after the Death of her Huſband may waive it. *Vide Baron and Feme*, (R.)

So, if a Woman Leſſee for Years takes an Huſband, who accepts a new Leaſe, and the Wife ſurvives. *R. Mo.* 637.

So, if a new Leaſe be made to an Infant, it is no Surrender, if he does not agree to it at full Age. *Cro. Car.* 502.

So,

So, if an Idiot or *Non-compos*, makes a Surrender, it will be void. *R. Comb.* 438, 468.

So, if a Leſſee ſurrenders Part of the Eſtate, it will be a Surrender only for that Part. 2 *Rol.* 498. *l.* 51.

If he accepts a new Leaſe of Part. *R.* 2 *Rol.* 498. *M.*

If a Leſſor leaſes *de novo* to his Leſſee and another, it will be a Surrender only for a Moiety. *Dub.* 2 *Lev.* 127.

If the Leſſee of a Corporation Aggregate be made the Head of the ſame Corporation, it is no Surrender. *Co. L.* 338. *b.*

So, if the Leſſor takes in Marriage a Woman, Leſſee; for he may have the Freehold in his own Right and the Term in the Right of another. *Co. L.* 338. *b.* *R. Pl. Com.* 418. *b.*

Or if the Leſſee makes the Leſſor his Executor. *Co. L.* 338. *b.*

(K) In what Manner a Surrender may be.

A Leſſee may ſurrender upon Condition, and if the Condition be broken, the particular Eſtate ſhall be reveſted. *Co. L.* 218. *b.*

So, upon a Surrender, reſerving Rent, tho' the Rent is not good by Way of Reſervation, yet it ſhall be ſo by Way of Contract. *R.* 2 *Lev.* 80. 1 *Vent.* 242, 272.

Tho' the Surrender be by Aſſignment, *&c.* by *Parol.* *R.* 2 *Lev.* 80. 1 *Vent.* 242, 272.

So, if Tenant for Life joins in a Feoffment or Fine with him in the Reverſion, rendring Rent to the Leſſee for Life; the Rent will be good. *Cro. El.* 688.

So a Surrender may be made of Land in the County of *B.* at a Place out of the County. 2 *Rol.* 495. *l.* 5.

(L) The Effect of a Surrender.

(L. 1.) The Eſtate is abſolutely determined between the Parties.

IF an Eſtate be ſurrendred, the whole Eſtate is determined without other Ceremony.

And as to the Parties themſelves, it will be determined to all Intents. *Co. L.* 338. *b.*

And therefore, if an Huſband, ſeiſed in Right of his Wife, leaſes for the Life of *B.* which is a Diſcontinuance, and afterwards *B.* ſurrenders his Eſtate to the Huſband, the Diſcontinuance is determined. *Co. L.* 338.

If *A.* mortgages his Reverſion in Fee to the Leſſee for Years, whereby his Term is ſurrendred, and afterwards pays the Money purſuant to the Condition, yet his Term ſhall be extinguiſhed, and not revive. *R.* 3 *Leo.* 6.

(L. 2.) Or for the Benefit of a Stranger.

So by a Surrender the Eſtate will be abſolutely merged for the Benefit of a Stranger. *Co. L.* 338. *b.*

As, if a Biſhop has a Rent-charge in Fee, and the Terre-tenant enfeoffs him, whereupon the Lord enters for *Mortmain*, he ſhall have it diſcharged of the Rent. *Ibid.*

If a Reverſioner makes a Leaſe, grants a Rent-charge, *&c.* and afterwards the Leſſee of the particular Eſtate ſurrenders, the Leaſe, or Grant of the Reverſioner takes Effect immediately. *Ibid.*

If *A.* makes a Leaſe to *B.* for Life, rendring Rent to him and his Heirs, Remainder to *C.* the Reverſion to himſelf, and afterwards grants the Reverſion to *C.* to whom *B.* attorns, yet *C.* ſhall not have the Rent, but the Heir of *A.* *Co. L.* 338. *b.*

So by a Surrender the Eſtate will be merged, tho' it be to the Diſadvantage of him who aſſents: As, if the Reverſioner grants a Reverſion for Life to which the

Leſſee attorns, and afterwards releaſes to the Grantee and his Heirs, tho' the Leſſee ſhall be now puniſhed for Waſt, where he was diſpuniſhable upon the Grant of the Reverſion for Life; yet becauſe he has attorned to the Grant, the Eſtate of the Grantee for Life ſhall not have Continuance. *Co. L.* 338. *b.*

(L. 3.) But not to his Prejudice.

But the Eſtate ſhall have Continuance notwithſtanding the Surrender, to avoid a Prejudice to a Stranger. *Co. L.* 338. *b.*

As, if a Reverſion upon the Life of *B.* be granted with Warranty, and afterwards *B.* ſurrenders, the Grantee ſhall not have Execution in Value againſt the Grantor, who is a Stranger, during the Life of *B.* *Co. L.* 338. *b.*

If Tenant for Life or Years grants a Rent-charge, Common, *&c.* and afterwards ſurrenders; yet the Rent, *&c.* continues. *Co. L.* 338. *b.*

(M) When a Charge revives by the Avoiding of a Surrender.

SO a Charge made before the Surrender revives, if the Surrender be avoided, againſt him, who claims *Paramount* the Surrender: As, if Leſſee for Life grants a Rent-charge and afterwards enfeoffs the Grantee, and the Leſſor enters for the Forfeiture, the Rent revives; for the Leſſor claims *Paramount* the Feoffment. *Co. L.* 338. *b.*

So, if Grantee for Life of a Rent accepts a Leaſe of the Land from him in the Reverſion, and afterwards the Leaſe is ſurrendred, the Rent revives. *R. per* 3 *J. Bramſton cont. Cro. Car.* 101.

(N.) Surrender, how pleaded.

IF a Surrender be by Acceptance of a new Leaſe, it is not good to ſay, That the Leſſee being poſſeſſed by a former Leaſe, the Leſſor demiſed to him, but, that the Leſſee ſurrendred and then the Leſſor demiſed, or, that the Leſſor entred and demiſed. *Semb. per Dy. Pl. Com.* 194. *b.*

So regularly he ought to plead, That he ſurrendred the Eſtate and Land. *Cro. Car.* 101.

So regularly he ought to ſhew, That the Leſſor aſſented to it, where the other Party pleads or brings an Action in Diſaffirmance of the Surrender. 2 *Vent.* 207.

But the Omiſſion will be aided after Verdict.

And it is not of Neceſſity. *Semb.* 2 *Vent.* 207.

But if the Party pleads a Surrender of the Demiſe *aforeſaid*, it is ſufficient. *R. Cro. Car.* 101.

So he need not ſhew, That the Leſſor entred after Agreement to the Surrender. *Ibid.*

Vide more concerning *Surrender* in *Bail*, (Q. 2, &c.—R. 3.)—*Fine*, (E. 11.)—*Franchiſe*, (G. 2.)—*Officer*, (K. 9.)—*Patent*, (G.)

Surrender of a Copyhold.

Vide Copyhold, (F. 1, &c.)

SURREBUTTER.

Vide Pleader, (L.)

SUR-

SURREJOINDER.

Vide Pleader, (I.)

SURVEYOR OF HIGHWAYS.

Vide Chimin, (C. 1, &c.)

SUSPENSION.

(A) Suſpenſion; What ſhall be.

IF a Seigniory, Rent, or other Profit *aprendre* out of Lands comes to him, who has Poſſeſſion of the ſame Land, for a Time, ſuch Unity of Poſſeſſion creates a Suſpenſion of the Seigniory, Rent, *&c.* for the Time. *Co. L.* 313. *a.*

As, if *A.* be Tenant for Life, Remainder to *B.* in Fee, and the Lord grants his Services to *A.* in Fee, they are ſuſpended during the Life of *A.* *Lit. S.* 560.

So, if there be Lord and Tenant, and the Tenant grants his Tenancy to *A.* for Life, and then the Lord grants his Seigniory to *A.* in Fee, the Seigniory will be ſuſpended during the Life of *A.* *Lit. S.* 562.

So, if *A.* diſſeiſes the Tenant, or the Tenant grants to *A.* in Fee upon Condition, and then the Lord grants to *A.* in Fee, and afterwards the Diſſeiſee enters, or the Tenant enters for the Condition broken, the Services revive, and are not extinguiſhed; tho' *A.* had a Fee, for he had not ſo perdurable an Eſtate in the Tenancy as in the Seigniory. *Co. L.* 313. *b.*

So, if the Tenant leaſes to the Lord for Life, or for Years, or enfeoffs him upon Condition, the Seigniory is ſuſpended. *Co. L.* 314. *a.*

Or, if the Lord diſſeiſes his Tenant, the Seigniory will be ſuſpended till the Entry of the Diſſeiſee. *Co. L.* 314. *a.*

So, if the Tenant marries a Woman, who has the Seigniory, it will be ſuſpended during the Coverture. *Sav.* 21.

If *A.* ſeiſed of Lands held of the Manor of *B.* be attainted for High Treaſon, and the King grants his Lands to *D.* the Rent payable to the Manor of *B.* tho' ſuſpended by the Attainder, ſhall be revived and paid by the Patentee. *R. Ley* 1.

(B) What ſhall be an Extinguiſhment.

BUT, if a Man has as high and perdurable an Eſtate in the Seigniory, Rent, Common, or other Profit *aprendre*, as in the Land, ſuch Profit *aprendre* will be extinguiſhed. *Co. L.* 313. *a.* *Lit. S.* 561.

As, if he, who has a Seigniory, Rent, Common, *&c.* releaſes his Eſtate or Intereſt to the Terre-tenant, *Vide Reaſe*, (B. 6.)

Or the Lands, out of which a Rent, *&c.* iſſues, come to the Lord by Purchaſe, Deſcent, or other lawful Means. *R. Jon.* 234.

If a Manor, to which Common for the Lord and his Copyholders belong in the Waſt of the King and others, comes to the King by the Statute of Diſſolutions, *&c.* the Common of the Lord in the Waſt of the King is extinguiſhed; but not the Common of the Copyholders, nor the Common which the Lord himſelf has in the Waſt of others. *R. Jon.* 349.

So, if the Land out of which a Rent, *&c.* is granted, be evicted by an elder Title, the Rent will be extinct. *Co. L.* 147. *a.*

So every Cuſtomary Payment or Privilege for the Profit of the Lord, will be extinguiſhed by Unity of Poſſeſſion in Fee: As, if the Lord purchaſes the Land held of him, all the Services are extinct.

So an Heriot, Fine, *&c.* due by Cuſtom upon Death, Alienation, *&c.*

A Cuſtom to be Beadle to the Lord, Collector of his Rents, *&c.* *Bro. Exting.* 14.

So an Eaſement, as a Way. *R. Cro. El.* 300. *R.* 1 *Rol.* 935. *l.* 45.

Uſage to repair Fences between ſuch and ſuch Cloſes. *R.* 1 *Vent.* 97. *Ray.* 192. *R. Pal.* 446.

So a Liberty of placing Pipes for Water, if the Pipes are taken away during the Unity. *Pal.* 446.

But Things of Neceſſity, and Collateral, are not extinguiſhed: As, a Way of Neceſſity, Gutter, Water-courſe, *&c.* *R. Pal.* 446. *Jon.* 145, 6.

So Extinguiſhment or Suſpenſion by Law may be prevented in Equity. *Vide Chancery*, (4 N. 6; 8.)

(C) When by Extinguiſhment of Part the Whole will be extinguiſhed.

IF a Man has a Profit *aprendre* out of Land againſt Common Right, and he purchaſes Part of the Land out of which, *&c.* the Whole will be extinct: As, if the Grantee of a Rent-charge purchaſes Parcel of the Land; for the Rent is intire, and iſſues out of every Part of the Land. *Co. L.* 147. *b.*

So, if a Commoner of Common Appurtenant purchaſes Part of the Land out of which. *Vide Common*, (L)

So, if a Grantee of a Rent-charge recovers Part of the Land by a feigned Title; for he claims under the Grantor. *Co. L.* 148. *b.*

So, if the Conuſee of a Statute purchaſes Part of the Land of the Conuſor, the Whole ſhall be extinct. *Sav.* 69. *R. Jon.* 445.

Or, if he diſſeiſes the Conuſor of Part, he cannot take Execution of the Reſidue, till the Diſſeiſin purged. *Jon.* 445, 6.

So, if a Thing be due by Common Right, by the Act of him, to whom due, the Whole may be extinguiſhed: As, if a Tenure be by intire Service, annual, or caſual, if the Lord himſelf purchaſes Part, the Whole will be extinct. 6 *Co.* 1. *b.* *R.* 8 *Co.* 105. *b.* *Co. L.* 149. *b.*

If the Lord releaſes his Seigniory to Part, the whole Seigniory will be extinct. 6 *Co.* 1. *b.*

So, if the Lord comes to Part, partly by his own Act, and partly by Default of the Party: As, if he recovers in a *Ceſſavit*. *R.* 6 *Co.* 2. *b.*

So, if the Lord comes to Part by Act of Law, where another will have Prejudice: As, if the Lord by Deſcent comes to the Part of a Joint-tenant, who holds by Suit of Court, the Whole will be extinct; for by the *St. Marlb.* the other Joint-tenants ſhall have Contribution. *R.* 6 *Co.* 2. *a.*

Otherwiſe, if the Service due be not for the Sole Benefit of him to whom due, but alſo for the Publick Good; as a Thing for the Defence of the Realm, Advancement of Juſtice, Charity, *&c.* 6 *Co.* 2. *a.* *Vide Poſt*, (F.)

But if the King purchaſes Part of the Lands ſubject to his Debt, he ſhall have Execution upon the Reſidue. *R. Sav.* 69.

(D) Or by Suſpenſion of Part the Whole will be ſuſpended.

SO, if a Tenant makes a Gift in Tail, or a Leaſe for Life, or for Years, of Part of his Land to his Lord, the whole Rent will be ſuſpended; for Rent-Service cannot be ſuſpended for Part by the Act of the Party, and *in Eſſe* for the other Part. *Co. L.* 148. *b.*

So, if the Leſſor enters upon the Leſſee for Life, or for Years, and ouſts him of Part of the Land, the whole Rent will be ſuſpended. *Ibid.*

So,

So, if there be a Leaſe of a Warren in three *Vills*, rendring Rent, and the Leſſor grants the Reverſion of the Warren in one Vill, the whole Rent will be ſuſpended; for Rent due by Contract ſhall not be apportioned, but perhaps the Leſſor will have a Remedy upon his Contract. *R.* 3 *Leo.* 1. 1 *And.* 26.

(E) When there ſhall be an Apportionment.

BUT a Thing of Common Right ſhall be apportioned: As, if a Man who has a Rent-Service purchaſes Part of the Land, the Rent, if it be not an intire Thing, ſhall be apportioned. *Lit. S.* 222.

And this was by the Common Law, and not by Conſtruction upon the Statute *Quia Emptores Terrarum*. *Co. L.* 148. *a*. *Cont. Dy.* 4. *b*.

The Rent-Service ſhall be apportioned, if the Leſſee for Life or for Years ſurrenders Part of the Land to the Leſſor. *Co. L.* 148. *a*.

So, if the Leſſor grants or deviſes Part of the Reverſion to another. *Co. L.* 148. *a*. *R. Cro. El.* 771.

Or enters into Part for a Forfeiture. *Co. L.* 148. *a*. *Dy.* 5. *a*.

Or recovers Part of the Land in Waſte. *Co. L.* 148. *a*.

So, if Part of the Land out of which the Rent iſſues is evicted. *Semb.* 2 *Cro.* 160.

So, if a Man, who has Common Appendant, purchaſes Parcel of the Land, the Common ſhall be apportioned. *Vide Common*, (L)

So, if *A.* ſeiſed of one Acre in Fee, of another in Tail, leaſes for Life or Years, or makes a Gift in Tail reſerving Rent and dies, whereon the Iſſue in Tail enters, the Rent ſhall be apportioned. *Co. L.* 148. *b*.

So a Thing againſt Common Right ſometimes may be apportioned: As, if a Rent-charge in Fee be granted by Deviſe or Fine, a Moiety to *A.* in Fee, a Moiety to *B.* in Fee, and no Attornment is neceſſary. *R.* 2 *Lev.* 240.

If Rent be apportioned, in an Action for the Rent, the Defendant may ſhew the Value of the Land, and at what Rate the Apportionment ſhall be made. *R.* 1 *Vent.* 276. *Semb. Cro. El.* 771. 2 *Cro.* 160.

Or upon *Nil debet*, it may be apportioned by the Jury. 1 *Vent.* 276.

So Rent may be apportioned in Equity, when it ſhall not by Law. *Vide Chancery*, (2 E.—4 N. 5.)

(F) Or a Suſpenſion only for Part.

SO by Act of Law a Thing may be ſuſpended in Part, and *in Eſſe* for Part: As, if the Lord in *Chivalry*, as Guardian, enters upon the Land of his Tenant within Age, whereby the Rent is ſuſpended during the Minority; yet if the Wife recovers Dower, ſhe ſhall pay a third Part of the Rent. *Co. L.* 148. *b*.

So, if the Tenant makes a Gift in Tail to the Father of the Lord of Part of his Land, which deſcends to the Lord, the Seigniory ſhall be ſuſpended for Part and *in Eſſe* for Part. *Co. L.* 148. *b*.

So, if the Terre-tenant makes a Gift to the Father of the Grantee of a Rent-charge of Part of the Land charged. *Co. L.* 148. *b*.

So, by the Act of a Stranger: As, if one Joint-tenant or Parcener diſſeiſes the Tenant, the other may diſtrain for his Moiety of the Rent. *Co. L.* 148. *b*.

So, if one Joint-tenant of a Seigniory purchaſes the Tenancy, one Moiety is extinct, and the other Moiety ſhall be held of the other Joint-tenant. *Sav.* 21.

(G) When all the Services, &c. remain, and are not apportioned, or extinguiſhed.

SO, if *A.* be ſeiſed of one Acre in Fee, and another in Tail, and grant a Rent out of both in Fee, in Tail, for Life or Years, and die, whereby the Acre in Tail is diſcharged, the whole Rent remains upon the other Acre; for he ſhall not take Advantage of the Imbecillity of his Eſtate to defeat his Grant. *Co. L.* 148. *b*.

So, if a Tenant holds by intire Services, he ſhall not make an Apportionment by his own Act; but the Services are multiplied: As, if Tenant of three Acres by Homage, Fealty, Suit, *&c.* enfeoffs *A.* of one Acre, *A.* ſhall do the ſame Services intirely, and alſo the Feoffor for the Reſidue. *R.* 6 *Co.* 1. *a.* *R.* 8 *Co.* 105. *b.*

Or by Service of a Hawk annually, for an intire annual Service ſhall be multiplied, as well as caſual. *R.* 6 *Co.* 1. *a.*

So, tho' the intire annual Service be a Matter of Profit, as an Horſe, Ox, *&c.* as well as where it is a Hawk, Dog, or other Matter of Pleaſure. *R.* 8 *Co.* 105. *b.*

So, if the Tenant holds by a Perſonal Service to be done by the Perſon of a Man, as the Service of *Chivalry*, to be Sewer, Butler, *&c.* if the Tenant aliens Parcel, the Service ſhall be multiplied, where it can be done without Prejudice to the Lord; As, in Service of *Chivalry*: if it cannot be multiplied without his Prejudice; As, to be Butler, *&c.* the Service remains, but ſhall not be multiplied. *R.* 8 *Co.* 105. *b.*

So in Services for the Publick Good; As, for Defence of the Realm, Advancement of Religion, Juſtice, Charity, *&c.* tho' they are intire, the Act of the Lord himſelf ſhall not make an Extinguiſhment, but they remain: As, if the Lord purchaſes Part of the Land held by Chivalry, Eſcuage, Caſtle-Guard, Cornage, *&c.* for the Service is for Defence of the Realm. 6 *Co.* 2. *a.*

Or by the Service of making a Bridge, Beacon, Repairing an Highway, *&c.* 6 *Co.* 2. *a.*

Or by the Service of finding a Preacher in ſuch a Church, Marriage for a poor Virgin, *&c.* annually. 6 *Co.* 2. *b.*

Or by Service to aid the Sheriff, to be High Conſtable, keep the King's Records, *&c.* 6 *Co.* 2. *a.*

So a Thing Collateral to the Land ſhall not be extinct by Unity of Poſſeſſion: As, if an Abbot, *&c.* was ſeiſed in Fee of Lands, out of which Tithes are payable, and of the Rectory to which; for when the Union ceaſes the Tithes revive. *Vide Diſmes*, (E. 9.)

If *A.* having a Warren in the Land of *B.* purchaſes the Land, the Warren is not extinct, but when he aliens the Land, it revives. *Bro. Exting.* 5.

So *Shack* Common, or by Reaſon of *Vicinage*. *R.* 1 *Rol.* 935. *l.* 36.

So the Privilege of a Manor within the *Purlieu* of a Chaſe, to hunt within the Chaſe, is not loſt, if the Manor and Chaſe come to the King, who afterwards aliens the Manor. *Dy.* 327. *a.* 1 *Rol.* 935. *l.* 40.

So, if *A.* having a Portion of Tithes out of the Rectory of *B.* purchaſes the Rectory, the Portion is not extinct. *R.* 2 *Rol.* 161.

So a Matter of Neceſſity will not be extinct by Unity of Poſſeſſion: As, a Way of Neceſſity. 1 *Rol.* 936. *l.* 2. *Vide Chimin*, (D. 4.)

So, if by Cuſtom in *London* the Owner of a Tenement has a Gutter in a Tenement adjoining, and afterwards purchaſes the Tenement in which. and after that aliens again, the Alienee cannot ſtop the Gutter; for it was as neceſſary afterwards as before. *Bro. Exting.* 60. *Per Cur'* 11 *H.* 7. 25. *b.*

If the Cloſe of *A.* ought to repair the Fence of *B.* who purchaſes the Cloſe of *A.* in Fee and dies, whereby the Cloſes are divided between the Daughters, the Preſcription continues. *Dub. Dy.* 295. *b.*

So a Thing which runs with the Land will not be extinct by Unity of Poſſeſſion; As, if the Lord purchaſes Land of the Nature of *Gavelkind* or *Borough Engliſh*, the Cuſtom remains. 11 *H.* 7. 25. *b.*

The Cuſtom of *Free-Bench*. *Bro. Exting.* 14.

So, if the Lord purchaſes Part of the Land, where by Cuſtom an Heriot is due upon the Death of every Tenant, the Heriot ſhall not be extinct. *Co. L.* 149. *b.* 8 *Co.* 106. *b.*

So, where a Leſſor has Land by Contract from an Under-Leſſee, no Rent ſhall be ſuſpended contrary to the Agreement of the Parties: As, if *A.* leaſes to *B.* for 21 Years rendring 20*l.* *per Annum*, and *B.* leaſes to *C.* rendring no Rent for 10 Years,

Years, and *C.* aſſigns his Term to *A.* the Rent of *B.* ſhall not be ſuſpended or apportioned, but he ſhall pay 20*l. per Annum* as before. *R.* 2 *Lev.* 143.

SWANIMOTE COURT.

Vide Chaſe, (R. 2.)

SWEARING.

Vide Juſtices of Peace, (B. 23.)

SYNONYMOUS WORDS.

Vide Covenant, (D. 2.)

TAIL.

Vide Eſtates, (B. 1, &c.) *and the ſeveral Titles* referred to under *Tenant in Tail.*

TALLAGE.

Vide Antient Demeſne, (F. 3.)—*Parliament*, (H. 9, &c.)

TARDE.

Vide Retorn, (D. 1.)

TAXES.

Vide Chancery, (4 T.)—*Parliament*, (H. 9, &c.)—*Scotland*, (D. 8.)—*Sewers*, (E. 1, &c.)

TEMPORAL COURTS.

Vide Diſmes, (M. 5.)

TEMPORAL JURISDICTION.

Vide Hereſy, (B. 4.)—*Prærogative*, (D. 28, &c.)

TEMPORAL LORDS.

Vide Parliament, (D. 3.—G. 10.)

TEMPS.

(A) Time; How computed; Inclusive or Exclusive.

HOW the Year, Month, Day, shall be computed. *Vide Ann.*

When by the Calendar or Lunar Month. *Vide Ann.*

If a Thing be limited to be done within such a Time after such a Fact, the Day of the Fact shall be taken inclusive: As, where the *St.* 27 *Eliz.* 18. requires an Action against the Hundred within a Year after the Robbery, the Day of the Robbery shall be included within the Year. *Per* 2 *J.* 1 *cont. Hob.* 139. 2 *Rol.* 520. *l.* 47. *Vide Hundred*, (C. 4.)

But where it is limited within such a Time after the Date of a Deed, *&c.* the Day of the Date shall be taken exclusive: As, a Protection shall be for a Year exclusive of the Day of the Date. *Hob.* 139.

By the *St.* 27 *H.* 8. 16. it is sufficient, if a Deed be inrolled within six Months exclusive of the Day of the Date. *Hob.* 139. *Vide Bargain and Sale*, (B. 8.)

When the Commencement of a Lease is exclusive of the Date or not. *Vide Estates*, (G. 8.)

(B) Of what Times the Law takes Notice.

(B. 1.) Of a Year and a Day.

Vide Ann. THE Law takes Notice of the Commencement and Course of the Year, and all Times which depend upon the Calendar *Vide Post*, (B. 2.)

So, of the Commencement and End of the Term. 1 *Sid.* 304.

And therefore, if there be a Promise upon Forbearance till *Easter* Term; it is sufficient to say, That he forebore accordingly, without saying what Day that was. *R.* 2 *Cro.* 548.

(B. 2.) Of the Calendar.

So the Judges may take Notice of the Calendar: As, if an Inferior Court be held 16 *Feb.* the Court may take Notice by the *Almanack* that it was upon a *Sunday*, without Trial by the Country. *R. Cro. El.* 227. 1 *Leo.* 328.

So of Moveable Feasts as well as Immoveable, and the Course of the Moon, upon which they depend, the Court will take Notice by the Almanack; for, without that, they do not know the one or the other. *Mod. Ca.* 160, 196.

So the Calculation of *Easter*. *Mod. Ca.* 196.

So, if a Court be alledged *Die Mercur'* 3 *Die M.* where the 3 *Dies M.* was *Dies Lunæ*, it is Error. *R.* 1 *H.* 7. 12. *b.*

Or, *Die Jovis super Festum S. Andræ*, where that Feast was *Die Veneris*. 1 *H.* 7. 12. *b.*

But where a Time is mentioned, not fixed by the Calendar, it ought to be specially averred; for otherwise the Court does not take Notice of it: As, if a Leet be alledged 18 *April*, tho' that be within a Month after *Easter*, yet the Court need not take Notice of a Moveable Feast. *Jon.* 301.

If a Breach of Covenant be alledged 20 *June*, they need not take Notice, whether it be within *Trinity* Term; for the End and Commencement of *Trinity* and *Easter* Terms not being fixed by the Calendar, the Court need not take Notice of them. *Semb.* 1 *Sid.* 308. *R. per* 3 *J. Cro. El.* 210.

If a Writ of Inquiry be returnable *Die Lunæ post* 15 *Hillar'*, and executed 27 *January*, the Court need not examine whether it be before or after the Return. *R. Cro. Car.* 53.

So,

So, tho' it has Relation to a Time known by the Calendar: As, if a Man promiſe Payment at *Whitſuntide* Fair, in *Aſſumpſit* after *Whitſuntide*, it muſt be averred that *Whitſuntide* Fair is paſſed, otherwiſe it is Error; for the Court does not take Notice of it. *R.* 1 *Rol.* 29. *l.* 45.

So, where the Calendar ſhews the Time, the Court, after Execution done, need not conſult it, to avoid the Debt, tho' they will examine it before Execution. 2 *Jon.* 228.

Yet they may take Notice, if it be mentioned *Ore tenus*, as well as if it was aſſigned upon the Record. *Mod. Ca.* 196.

[By *St.* 24 *G.* 2. *c.* 23. The Calendar is corrected, and New-Stile eſtabliſhed. The Year 1752 to begin 1ſt *January* 1752, and the Day after the 2d *September* 1752 to be accounted the 14th *September*.

(B. 3.) *De Die Dominico.*

The Award of any Judicial Proceſs upon a *Sunday* is void. *Jon.* 156.

So the Entry of any Judgment upon Record. *Ibid.*

So, if Judgment be given upon a *Sunday* in an Inferior Court, it will be void. *R. Cro. El.* 227. 1 *Leo.* 328.

So the Return of a Writ by a Sheriff. *R. Mod. Ca.* 148, 159, 196.

[A Writ of Inquiry executed on a *Sunday* is naught, and Advantage may be taken of it on Writ of Error, tho' not aſſigned for Error. *Ld. Cornwallis* v. *Hoyle*, *M.* 6 *G. Fort.* 373.]

So now by the *St.* 29 *Car.* 2. 7. If any ſerve or execute Proceſs, Warrant, Order, Judgment, or Decree, (except for Treaſon, Felony, or Breach of the Peace) it ſhall be void to all Intents, as if done without Proceſs, Warrant, *&c.*

And therefore, Falſe Impriſonment lies for it. 1 *Sal.* 78. 5 *Mod.* 95.

And Prohibition to the Spiritual Court, if the Proceeding be upon Proceſs iſſuing from thence. *Semb.* 5 *Mod.* 449.

But before the *St.* 29 *Car.* 2. 7. All Miniſterial Acts upon a *Sunday* were lawful, tho' not Judicial: As, an Arreſt by an Officer upon Proceſs. *R.* 9 *Co.* 66. *b.* 2 *Cro.* 280. *Godb.* 280. 2 *Bul.* 72.

So, by the *St.* 29 *Car.* 2. 7. Execution of Proceſs, Warrant, *&c.* in Caſes of Treaſon, Felony, or Breach of the Peace, is allowed.

And Execution of a Warrant of Juſtices of Peace for good Behaviour is lawful within this Exception. *R. Ray.* 250. Before the Statute, it was held *cont. Cro. Car.* 602.

So an Information may be exhibited on a *Sunday* upon a ſpecial Law. *R. Jon.* 156.

So, if a Defendant arreſted on a *Saturday* eſcapes, he may be retaken upon the *Sunday*, for that is not an Execution of Proceſs, but a Continuance of the former Impriſonment. *Mod. Ca.* 231.

So Bail may ſeiſe their Principal on a *Sunday*. *Ibid.*

So a Perſon may be taken upon an Eſcape Warrant on that Day; for it is in the Nature of a Taking upon freſh Suit. *R. Mod. Ca.* 95.

[A Perſon may be arreſted on *Sunday*, on Lord Chancellor's Warrant, on an Order of Commitment for Contempt; for he is conſidered as in Cuſtody from the Time of making the Order, and the Warrant is directed to the Gaoler, and is in the Nature of an Eſcape-Warrant. *Semb. Whitechurch's Caſe*, *P.* 1749. 1 *Atkyns* 55.]

[A Perſon may ſurrender voluntarily on a *Sunday*. *Ibid.*]

[Proceſs on an Indictment, and Attachment for a Contempt, may be ſerved on a *Sunday*. *Ibid.*]

[A Man may be taken on Attachment for Non-performance of an Award, on a *Sunday*. *Ibid.*]

So a Proclamation upon Summons may be made on a *Sunday* according to the Statute 31 *El.* 3. *Semb. per Holt*, 5 *Mod.* 449.

So a Citation out of the Spiritual Court may be publiſhed at the Door of the Church on a *Sunday* according to the Uſage of the Court; tho' it cannot be ſerved upon the Perſon. *Semb. per Holt*, 5 *Mod.* 450. *Carth.* 504.

So

So *Hue* and *Cry* may be made upon a *Sunday*. *R. Godb.* 280.

And, if the Hundred refuſe to make it, they ſhall be puniſhed for the Neglect. *Per* 3 *J. Mont. cont. Godb.* 280.

By the *St.* 1 *Car. ch.* 1. continued by the *St.* 3 *Car.* 4. and 16 *Car.* 4. If any aſſemble on the Lord's Day out of his Pariſh for Sports, or in his Pariſh uſe Bear or Bull-beating, Interludes, or unlawful Paſtimes, if convicted by any Juſtice of Peace on View, by Confeſſion, or one Witneſs in a Month, he ſhall forfeit 3 *s.* 4 *d.* for every Offence, to be be levied by Diſtreſs and Sale, *&c.* and for Want of Diſtreſs be ſet in the Stocks three Hours.

By the *St.* 1 *Jac.* 22. Shoemaker, *&c.* who ſhews for Sale any Shoes, Boots, *&c.* on *Sunday* ſhall forfeit 3 *s.* 4 *d.* for every Pair, and the Value to be recovered by Action, *&c.*

By the *St.* 3 *Car. ch.* 1 continued by the *St.* 16 *Car.* 4. If a Butcher, or any for him by his Privity, kill or ſell any Victuals on the Lord's Day, and be convicted in ſix Months on View of a Juſtice of Peace, by Confeſſion, or two Witneſſes before any Juſtice of Peace, he ſhall forfeit 6 *s.* 8 *d.* for every Offence, to be levied by Diſtreſs and Sale, *&c.* or by Information, Bill, *&c.* in a Court of Record of a Corporation, or in Seſſions, to the Uſe of the Poor.

[Selling Meat on *Sunday*, no Offence at Common Law; therefore Indictment muſt be *contra Formam, &c. Rex* v. *Brotherton, P.* 12 *G. Str.* 702.]

By the *St.* 3 *Car. ch.* 1. A Carrier, Waggoner, Carman, or Drover, or any for him, travelling with Horſe, Waggon, Cart or Cattle on the Lord's Day, ſhall forfeit 20 *s.* to be levied *ut ſupra*.

So by the *St.* 29 *Ca.* 2. 7. A Horſe-Courſer.

(C) Dies Juridici.

(C. 1.) What are.

(C. 1.) The terms. *Hilary* Term.

DIES Juridici are within the four Terms only. *Co. L.* 135. *a.*

The Terms were ſettled before the Conqueſt in the Time of the *Saxons*. *Per Dod.* 2 *Rol.* 443.

And comprehended all Times of the Year, except *Chriſtmas*, *Lent*, *Whitſuntide* and Harveſt. 2 *Rol.* 443.

Hillary Term antiently began, as it ſeems, *Oct. Epiphan'*, which was the Feaſt of *St. Hillary*, *viz.* 13*th January* and continued till *Septuageſima*, which was the third *Sunday* before *Lent*. *Dugd. Or. J.* 90.

But afterwards the Beginning was enlarged till *Oct. Hill'*, and the Continuance till *Lent*. 2 *Rol.* 443.

And it was afterwards aſcertained and confined to the four Returns: *Oct. Hill. Quinden' Hill. Cras. Pur.* and *Oct. Pur.* which was the 9*th Feb.* and the *Quarta Die poſt* was the 12*th Feb.* which is now the laſt Day of the Term. *Vide St.* 51 *H.* 3. *Dies Communes in B. et in Dote.*

(C. 2.) *Eaſter* Term.

Eaſter Term antiently began *Oct' Paſchæ*, and ended the Day before the Vigil of the Aſcenſion, as it ſeems. *Dudg. Or. J.* 91.

But afterwards the Beginning was deferred till *Quinden' Paſchæ*, and the End till the *Monday* before *Whitſuntide*, ſo that five Returns were contained in it. *Quind' pas' Tres Sept. Mens.* and 5 *Sept. Paſchæ*, and *Cras Aſcent'*. 2 *Rol.* 443. *Vide the St.* 51 *H.* 3. *Dies Communes.*

(C 3.) *Trinity* Term.

Trinity Term antiently began *Cras, Trin'* or *Oct' Pentecoſt'*, and continued till the *Gule* of *Auguſt*, containing ſix Returns. *Cras. Oct. Quind Trin. Cras. Oct. Quind. Joh. Bapt.* 2 *Rol.* 443. *St.* 51 *H.* 3. *Dies Communes.*

But by the *St.* 32 *H.* 8. 21. *Trinity* Term ſhall have but four Returns only, *Cras. Oct. Quind. Trin. & Tres Sept. Trin'*, and ſhall commence for ever on the *Monday* after *Trinity* for Eſſoines, Returns, Proferts, *&c.* And full Term ſhall begin on *Friday* next after *Corpus Chriſti*, as before it began on the *Wedneſday*.

And

And if the Feaſt of *St. John the Baptiſt* happens upon the *Friday*, yet the Term now begins upon the ſame Day, and it ſhall be *Dies Juridicus*. *R.* 2 *Cro.* 16. 1 *Rol.* 29.

So *Michaelmas* Term began antiently *Oct' Mich'*, and continued till *Advent*. 2 *Rol.* 443. *Dugd. Or. J.* 91. (C. 4.) *Michaelmas* Term.

And contained eight Returns *Oct' Quind' Tres Sept' Mens' Mich. Cras. Animar' Cras' Oct'* and *Quind' Martini*. *St.* 51 *H.* 3. *Dies Communes*.

But by the *St.* 16 *Car.* 1. 6. *Michaelmas* Term ſhall be reſtrained to the ſix laſt Returns only, and ſhall commence on the *Quarto Die poſt Tres Sept. Mich'*, unleſs it be *Sunday*, and then on the Morrow.

[By *ſtat.* 24 G. 2. *c.* 48. It contains only four Returns, *Craſ. Om. Anim.*—*Cras. Mart.*—*Oct. S. Mart.* and *Quind. S. Mar.* and begins on the fourth Day of the *Morrow of All-Souls*, (6 *November.*)

How the Term may be adjourned by Writ of Adjournment, and the Effect of it, *Vide Adjournment*, (A. 1, &c.)

(C. 5.) *Dies non Juridici.*

But by the Law of the Church and the Laws of *Edward* the Elder, *Knute*, *Edward* the Confeſſor, and *H.* 1 *Judicia et Juramenta* were prohibited (whereby all Proceedings in Law are comprehended) *ab Adventu Domini uſque Oct' Epiph'*, *a Septuageſimâ ad Oct'* or *Quind' Paſchæ*, *ab Aſcenſione Domini ad Oct' Pentecoſt.' Dudg. Or. J.* 89. *Wilk. L. Angl. Sax.* 197.

And by the Laws of *Edward* the Confeſſor, the Prohibition was extended *Diebus* 4 *Temporum*, *omnibus Sabbathis ab Horâ tertiâ poſt Meridiem tota Die ſequente uſque Diem Lunæ*, *Vigiliis S. Mar'*, *S. Mich.' S. Joh' Bapt'*, *Apoſtolor' omnium et Sanctor'*. *Dudg. Or. J.* 90. *Wilk. L. Angl. Sax.* 197.

And by the Canon Law, from *Advent* to the *Utas Epiphan'*, *a Septuageſimâ ad Utas Paſchæ*, in the Days of the four Times of the great *Letanies*, of the *Rogations*, the Week of *Pentecoſt*, the Time of cutting Corn or Vintage, which *laſts from St. Margaret* (*which was* 13*th July*) *till Quind' Mich.* 2 *Inſt.* 264.

And therefore now *Dies Dominicus*, tho' it be in Term, is not *Dies Juridicus*. *Co. L.* 135. *a.*

Nor in *Hillary* Term, the Day of the Purification of the Bleſſed Virgin *Mary*, in *Eaſter* Term, the Feaſt of the Aſcenſion, in *Trinity* Term, the Feaſt of *St. John the Baptiſt*, except when it falls on the firſt Day of the Term, in *Michaelmas* Term, *All Saints* and *All Souls*. * *Co. L.* 135. *a.* 2 *Cro.* 16. 2 *Inſt.* 265. * Since the *St.* 24 *Geo.* 2. 48. Theſe Days are not within *Michaelmas* Term.

[On 29 *May*, Reſtoration Day, only one Judge comes down, and Buſineſs is not uſually done; but it may, and it being the laſt common Paper-Day in *P.* 7 *G.* 3. the one Judge went thro' the Paper, or the Parties could not have had their Judgment that Term. 4 *B. M.* 2089.]

But the *Chancery* is always open.

So the *Exchequer* may ſit upon a *Sunday*, or out of Term. *Mad.* 551.

(C. 6.) What Things are lawful upon them.

Yet by the *St. W.* 1. 51. It is enacted, that Aſſiſes of *Novel Diſſeiſin*, *Mort d'anceſter*, and *Darrein Preſentment*, ſhall be taken in *Advent*, *Septuageſima*, or *Lent*, as other Inqueſts.

So, where by Cuſtom the Court of a Lord is to be held every *Monday*, if it falls upon *Chriſtmas*, or New Year's Day, which are not *Juridici*, yet the Court may then adjourn.

So, if the County Court happens upon ſuch a Feaſt, they may elect Knights for Parliament.

But an Award of Judicial Proceſs, or Entry of a Judgment upon ſuch a Day, is void. *Jon.* 156. *Vide Ante*, (B. 3.)

(C. 7.) The Term is only one Day.

(C. 7.) In what Reſpects.

The Term regularly is eſteemed as one Day: And therefore if a Deed be alledged to be inrolled in ſuch a Term, it ſhall be intended the firſt Day. *R.* 4 *Co.* 71 *a.*

If Judgment be given in full Term, it relates to the firſt Day of the Term. *R.* 1 *Bul.* 35.

And the firſt Day is the *Eſſoine*-Day, for the *Quarto Die poſt* is a Day of Grace. *R.* 1 *Bul.* 35.

And therefore, Inſpection of an Infant may be upon the *Eſſoine*-Day, and Judgment upon it. *R.* 1 *Bul.* 35.

So a Judgment relates to the firſt Day, tho' a Day be aſſigned for Argument at a Day ſubſequent. *R.* 1 *Bul.* 69.

(C. 8.) In what not.

But where the Day is material, it may be alledged, That the Thing was done ſuch a Day in the Term. 4 *Co.* 71.

As, if there be an Award *20th May*, That all Proceedings in an Action ſhall ceaſe; it may be alledged, That the Party afterwards proceeded and had Judgment, tho' the Judgment relates to the firſt Day of the Term, which was before the Award made. *Per Popb. Yel.* 35.

So the *Quarto Die poſt* is the full Term, and the Day for Appearance of the Parties. 1 *Bul.* 35.

And there ſhall be no Judgment againſt a Defendant upon his Default till the *Quarto Die poſt*. *R.* 1 *Bul.* 35.

So Proclamations upon a Fine muſt be in full Term; for the Pleas are to ceaſe. 1 *Bul.* 34.

[If Money is paid between the firſt Day of Term, and the Day on which a *Latitat* is ſued out, Plaintiff ſhall enter a ſpecial Memorandum, and it ſhall be as of the Day of the Return of the Writ. *Southouſe* v. *Allen*, *T.* 8 *G.* 2. *B. R. H.* 141.]

[Plaintiff may ſhew the *true Commencement* of an Action, contrary to the Fiction of Law, even in penal Actions. *Morris* v. *Pugh*, *M.* 2 *G.* 3. 3 *B. M.* 1241.]

[If there is no ſpecial Memorandum, he may ſhew by the Writ, that the Action was commenced after the Time to which the Bill relates. *Ibid.*]

(D) Reaſonable Time.

WHAT ſhall be reaſonable Time, the Juſtices are to determine.

(E) When Night is unſeaſonable.

SUMMONS in a Real Action ought not to be after the Setting of the Sun. *R. Cro. El.* 42.

Nor a Demand of Rent.

(F) When not.

BUT an Arbitrament made in the Night is good. *R. Cro. El.* 42.

So Livery of Seiſin upon a Feoffment. *Cro. El.* 43.

(G) Tim

(G) Time of Limitation.

(G. 1.) In Actions Real.

(G. 1.) When reduced to ſixty Years.

THE Time to make Title to an Inheritance is *de Tempore cujus contrar' Memoria Hominum non exiſtit*, (of which, *Vide in Preſcription*, (A.—E. 1.) or Time limited for ſuch particular Actions. *Co. L.* 115. *a.*

Before the *St. of Merton*, in a Writ of Right, it was *a Tempore Regis Henrici Senioris, viz.* the Beginning of the Reign of *H.* 1. which began 1 *Auguſt* 1100. 2 *Inſt.* 94.

By the *St. of Mert.* 20 *H.* 3. 8. a Writ of Right is limited *a Tempore Regis H. Avi noſtri, viz.* The Coronation of *H.* 2. which was 20 *October* 1154. 2 *Inſt.* 94.

By the *St. W.* 1. 3 *Ed.* 1. 39. In a Writ of Right none ſhall count of the Seiſin of his Anceſtor of a longer Seiſin than of the Time of King *Richard*, Uncle of King *Henry*, Father of the King that now is, *viz.* The Reign of *R.* 1. which began 7 *July* 1189. 2 *Inſt.* 238.

The Limitation *a Tempore R.* 1. imports the firſt Day of his Reign. *Co. L.* 115. *a.*

And now by the *St.* 32 *H.* 8. 2. No Perſon ſhall maintain any Writ of Right, or make any Preſcription, Title, or Claim to any Manors, Lands, Tenements, Rents, Annuities, Commons, *&c.* or other Hereditaments of the Poſſeſſion or Seiſin of any, his Anceſtor or Predeceſſor, or alledge any further Seiſin or Poſſeſſion of ſuch Anceſtor, or Predeceſſor, than within ſixty Years before the *Teſte* of the ſame Writ, or before the ſaid Preſcription or Title made.

And if any ſue ſuch Action, and cannot prove his Anceſtor or Predeceſſor in Seiſin, or actual Poſſeſſion within the Years before limited, if the ſame be traverſed or denied, *&c.* He and his Heirs ſhall be barred for ever.

And therefore in all Actions, which are of the Nature of a Writ of Right, in which the Plaintiff or Demandant muſt count of a Seiſin, and recover any Hereditament, he ſhall be barred, if his Anceſtor had not Seiſin within ſixty Years. (*Vide Bro. upon the St. Lim.* 16. *&c.*)

As, in a *Nativo habendo*; for it is a Writ of Right in it's Nature, in which the Villein ſhall be recovered. *Bro. upon St. Lim.* 17.

In a Writ of Cuſtoms and Services, for the Seigniory ſhall be recovered. *Bro. upon the St. Lim.* 16.

A *Quod permittat* for Eſtovers. *Bro. St. Lim.* 23, 24.

So, if there be a Plaint in a Court Baron, *&c.* and the Plaintiff makes Proteſtation to ſue in the Nature of a Writ of Right, he ſhall be barred, if there was not a Seiſin within ſixty Years. *Bro. St. Lim.* 21.

So, if there be an Action in a Court of *Antient Demeſne* upon a Writ of Right Cloſe. *Bro. St. Lim.* 22.

So, if a Biſhop or other Sole Corporation ſue upon a Seiſin of his Predeceſſor, he ſhall be barred; if the Seiſin was not within ſixty Years. *Bro. St. Lim.* 33.

So, if a Man claims a Thing by Preſcription, he muſt alledge Seiſin of the ſame Thing, where a Seiſin is neceſſary, within the Time of Limitation. *Bro. St. Lim.* 34, 35.

So where *Eſplees* or Seiſin ought to be alledged, the Count ought to alledge them within Time of Limitation. *Bro. St. Lim.* 13.

And therefore, if they are alledged in the Time of a King then dead, and Part of his Reign extended beyond the Time of Limitation, it ought to alledge Seiſin ſuch a Year of ſuch a King. *Bro. St. Lim.* 13, 14.

And Seiſin in Law is ſufficient without actual Seiſin. *R.* 4 *Co.* 10.

(G. 2.) When to fifty Years

By the *St. Mert.* 20 *H.* 3. 8. *Brevia Mortis Anteceſſoris, de Nativis, et de Ingreſſu non excedant ultimum Reditum Domini Regis Johannis de Hiberniâ in Angliam, viz.* the twelfth Year of K. *John.* 2 *Inſt.* 94.

And by the ſame *Stat. Brevia Novæ Diſſeiſinæ non excedant primam Transfretationem Domini Regis nunc in Vaſconiam, viz.* 5 *H.* 3. 2 *Inſt.* 95.

By the *St. W.* 1. 39. Writs of *Mort d'anceſter*, *Coſinage*, *Aiel*, Entry and *Nativis*, have Term from the Coronation of the ſame King *Henry* and not before, *viz.* 28 *Oct.* 1 *H.* 3. 2 *Inſt.* 95, 238. Writs of *Novel Diſſeiſin* and *Nuper obiit* have from the firſt Paſſage of King *Henry*, *viz.* 5 *H.* 3. 2 *Inſt.* 95, 238.

But now by the *St.* 32 *H.* 8. 2. No Perſon ſhall maintain Aſſiſe of *Mort-d'anceſtor*, *Coſinage*, *Aiel*, Writ of Entry *ſur Diſſeiſin*, or other poſſeſſory Action of the Poſſeſſion of any of his Anceſtors or Predeceſſors, for any Manors, Lands, *&c.* of any further Seiſin, but within fifty Years next before the *Teſte* of the Original.

And by the ſame *Stat. Scire facias* on Fines ſhall be ſued in fifty Years after Cauſe of Action fallen, and not after.

(G. 3.) When to forty Years.

So by the *St.* 32 *H.* 8. 2. No Perſon ſhall make any Avowry or Cogniſance for any Rent, Suit, or Service, or alledge any Seiſin or Poſſeſſion thereof in any Anceſtor, himſelf, or any other, above forty Years next before ſuch Avowry or Cogniſance.

And therefore, in an Avowry or Cogniſance for Rent-Service, or Seck, Seiſin muſt be alledged within forty Years. (*Vide Bro. St. Lim.* 63, *&c.*)

And if Seiſin be alledged within Time, the Defendant may plead, That he was never ſeiſed within forty Years.

And it will be a good Plea, tho' the Tenant make a Feoffment at this Day to hold by the ſame Services whereby he himſelf holds; for it is not a Rent created *de novo* in certain, but refers to the antient Rent. *Cro. Car.* 215.

So, if a Rent-Service be *ſaved* by an Act of Parliament, the *Stat.* of Limitations will be a good Plea; for it is not a Rent created by the Statute. *Cont. per* 3 *J. but* 2 *J. acc. and it was R. in B. R. upon Error. Cro. Car.* 81, 214. *Jon.* 233.

But in an Avowry for Rent, the Avowant need not alledge Seiſin within the Time limited by the Statute, where Seiſin need not have been alledged before; for it ſhall come by Plea from the other Party, if he was not ſeiſed. *Mo.* 31.

(G. 4.) When to thirty Years.

So by the *St.* 32 *H.* 8. 2. No Perſon ſhall maintain any Action upon his own Seiſin or Poſſeſſion above thirty Years before the *Teſte* of the Original.

And therefore ſhall not maintain Admeaſurement of Dower of his own Endowment; for he recovers the Land. *Bro. St. Lim.* 15.

(G. 5.) When to twenty Years.

So by the *St.* 32 *H.* 8. 2. All *Formedons in Reverter*, or *Remainder*, ſhall be ſued in fifty Years after Title or Cauſe of Action fallen, and not after.

And by the *St.* 21 *Jac.* 16. All *Formedons in Diſcender*, *Remainder*, or *Reverter*, ſhall be ſued in twenty Years after Title or Cauſe of Action firſt fallen, and at no Time after.

And therefore a *Formedon in Diſcender* muſt be ſued within twenty Years after the Cauſe of Action fallen.

Tho' it was not within the *St.* 32 *H.* 8. 2. 4 *Co.* 11. *a. Dy.* 278. *a.*

So by the *St.* 21 *Jac.* 16. No Perſon ſhall make Entry into any Lands, *&c.* but in twenty Years next after his Title of Entry, which ſhall firſt accrue, to the ſame; and in Default thereof ſuch Perſon ſo not entring and his Heirs ſhall be diſabled utterly from ſuch Entry.

And therefore, tho' ſince the *St.* 32 *H.* 8. 2. A Man might have entred after ſixty Years, if his Entry was *congeable*, and afterwards have maintained any Poſſeſſory Action. *R.* 4 *Co.* 12. *a.*

Yet, he is at this Day debarred of his Entry, if it be not made within twenty Years.

[In Ejectment for Mines, Plaintiff proving himſelf Lord of the Manor, and in Poſſeſſion of it, does not avoid the Statute of Limitations, if Defendant has been in Poſſeſſion of the Mines twenty Years; for they are diſtinct Poſſeſſions, and may be different Inheritances. *Rich* v. *Johnſon*, *M.* 14 *G.* 2. *Str.* 1142.]

And by the *St.* 4 *Ann.* 16. No Entry or Claim ſhall be ſufficient, unleſs an Action be proſecuted within a Year after.

And

And the Entry or Claim muſt be made upon the Land, unleſs it be prevented by a Special Cauſe. *R.* 1 *Sal.* 285. *Mod. Ca.* 44.]

So a Joint-tenant is not barred by Non-Entry in twenty Years, if his Companion was in Poſſeſſion. *R. Mod. Ca.* 44.

Nor one Parcener, who has the Whole by Deviſe, where the other Parcener takes the Profits. *H.* 1 *An. inter Reading and Roiſton, Sal.* 423.

So by the *St.* 10 & 11 *W.* 3. 14. No Fine, Common Recovery, or Judgment in Action Real or Perſonal, ſhall be reverſed for any Error or Defect, unleſs Error be commenced and proſecuted with Effect within twenty Years after ſuch Fine levied, Recovery ſuffered, or Judgment ſigned or entred on Record.

[A Reverſioner cannot have Error after twenty Years, tho' his Title did not accrue till after the Expiration of them, and tho' Error is brought in leſs than twenty Years after the Commencement of his Title. *Lloyd* v. *Vaughan, T.* 19 G. 2. *Str.* 1257.]

(G. 6.) In Actions Perſonal.

(G. 6.) When to ſix Years. *Vide Action upon the Caſe upon Aſſumpſit,* (D.—H. 6, 7.)

So by the *St.* 21 *Jac.* 16. All Actions of Treſpaſs, Detinue, Trover and Replevin for Goods and Chattels, Account, and upon the Caſe, (other than ſuch Accounts as concern Trade of Merchandize between Merchant and Merchant, their Factors and Servants) all Actions of Debt without Specialty, or for Rent, (other than Treſpaſs for Aſſault, Menace, Battery, Wounding or Impriſonment, and Actions on the Caſe for Slander) ſhall be brought in ſix Years next after the Cauſe of ſuch Actions, and not after.

And therefore, an Action upon the Caſe for *Trover* muſt be brought within ſix Years. *R.* 3 *Cro.* 246, 333.

So Debt for *Damage Clere*; for it is not founded upon a Record. *R. Ray.* 243.

So Account, after an Account ſtated between Merchants. *Semb. Jon.* 401.

[The Exception as to Merchants Accounts, is only meant to prevent dividing a running Account, but extends not to Accounts cloſed and concluded. *Welford* v. *Liddel, T.* 1751. 2 *Vezey* 400.]

So an Account by an *Inland* Merchant againſt his Factor, for the Exception in the Statute does not extend to *Inland* Merchants. *R. Ca. Ch.* 152.

So *Aſſumpſit*, or any Action, except Account, tho' it be for a Merchant's Account. *R.* 2 *Mod.* 312. 1 *Mod.* 70.

So *Inſimul computaſſet*, or *Indebitatus Aſſumpſit*, upon an Account ſtated. *R. per* 3 *J.* 1 *Lev.* 287, 298. 2 *Sand.* 127. *R.* 4 *Mod.* 105. 2 *Mod.* 311.

So *Aſſumpſit* by an Attorney for Fees. *R.* 3 *Lev.* 367. *D. cont.* 2 *Mod.* 213. *R. acc. Carth.* 144.

So Action upon the Caſe for an Eſcape, but not Debt. 1 *Sid.* 306.

So *Aſſumpſit* upon a Bill of Exchange, tho' it be between Merchants; for it is *tantamount* to an Account ſtated. *R.* 4 *Mod.* 105. *Sho.* 341.

So the Statute of Limitations will be a Bar, tho' Part of the Time elapſed during the Rebellion, when there was an Interruption of Juſtice. *R.* 1 *Lev.* 31, 111. *Sal.* 420.

Tho' the Defendant had Privilege of Parliament. *R.* 1 *Lev.* 111. *Sho.* 99.

Or was out of the Kingdom. *R. Sal.* 420. *R. Sho.* 99. 2 *Ver.* 541. *Hard.* 502. *But vide Poſt,* (G. 16.)

Tho' the Plaintiff had obtained Judgment or Sentence for it in *France*, or another Kingdom; for here it is to be conſidered only as a Debt upon ſimple Contract. *R.* 2 *Ver.* 540.

So by the *St.* 3 & 4 *Ann.* 9. Actions on Promiſſory Notes ſhall be brought within the Time appointed for Actions upon the Caſe by the *St.* 21 *Jac.* 16.

So by the *St.* 4 *Ann.* 16. All Suits in the Admiralty for Seamens Wages ſhall be commenced in ſix Years after the Cauſe of Action.

So they ought to have been before. *Semb. Mod. Ca.* 26. *Sal.* 424. *Hard.* 502.

But the Cauſe of Action ariſes by the Service, not by the Contract. *Mod Ca.* 26.

So where the Cauſe of Action commences by a Requeſt, or upon any other Condition precedent, the Statute cannot be pleaded, if the Action be commenced within ſix Years after the Requeſt, *&c.* tho' it be ten Years after the Promiſe or Contract. *R. Godb.* 437. *Jon.* 194, 329.

So, if an Account be delivered between Merchants, and one of them acknowledges ſo much due, the other inſiſts upon more, it is not an Account ſtated. *R. Jon.* 401.

So the Statute of Limitations does not extend to Suits in the Admiralty or Spiritual Court.

[It is not ſufficient that the Writ bears *Teſte* before the Expiration of the ſix Years, it muſt be really and in Fact taken out, for that is the Commencement of the Suit. And the true Time may be averred and ſhewn notwithſtanding the *Teſte*. *Johnſon* v. *Smith*, *P.* 33 *G.* 2. 2 *B. M.* 950.]

[Acknowledgment of the Debt, after Action brought, takes it out of the Statute. *Yea* v. *Fouraker*, *M.* 1 *G.* 3. 2 *B. M.* 1099.]

[The Statute doth not begin to run againſt a Foreigner till he he comes into *England*. *Strithorſt* v. *Græme*, *M.* 11 *G.* 3. 3 *Wilſ.* 145.]

(G. 7.) When to four Years.

So by the *St.* 21 *Jac.* 16. All Actions of Treſpaſs for Aſſault, Battery, Wounding, or Impriſonment, ſhall be brought within four Years next after the Cauſe of Action.

If Treſpaſs or Impriſonment be alledged, 32 *Car.* 2. *uſque* 1 *Jac.* 2. the Defendant may plead, as to all the Treſpaſs or Impriſonment, till 34 *Car.* 2. the Statute of Limitations, and another Plea to the Reſidue of the Time. *R. Sal.* 420.

(G. 8.) When to two Years.

So by the *St.* 21 *Jac.* 16. Actions upon the Caſe for Words ſhall be within two Years next after the Words ſpoken.

And, if the Words are actionable without a ſpecial Damage, the Statute of Limitations will be a Bar. *R. Ray.* 61. 1 *Sid.* 95.

So an Action *quia Crimen Felon' impoſuit*, *Ray.* 61. 1 *Sid.* 95. if it be not within ſix Years. *Vide infra.*

But an Action for Slander of a Title is not within the *St.* 21 *Jac.* *R. Cro. Car.* 141.

Nor an Action for Words founded upon an Indictment, or other Record. 1 *Sid.* 95.

Nor an Action *quia Crimen Felon' impoſuit:* 1 *Sid.* 95. *Vide ſupra.*

(G. 9.) What Caſes are not within the Statutes of Limitations.

(G. 9.) Such as may not fall within the Time limited.

But the *St.* 32 *H.* 8. 2. does not extend to Caſes where the Seiſin is caſual, and by Poſſibility does not fall within ſixty Years: As it does not extend to the Services of Homage or Fealty. *R.* 4 *Co.* 10. *b.* *Co. L.* 115. *a.* 2 *Inſt.* 96. *R.* 3 *Lev.* 21.

Nor to the Service of covering the Hall of the Lord, or going with him to War. 4 *Co.* 10. *b.*

Nor to a Writ of Right of Dower, for the Plaintiff does not count of her Poſſeſſion, nor of the Seiſin of any Anceſtor, and therefore it is out of the Statute. *Bro. St. Lim.* 23.

So, for the ſame Reaſon, it was enacted by the *St.* 1 *Mar.* 5. that 32 *H.* 8. ſhall not extend to a Writ of Right of Advowſon, *Quare Impedit*, *Darrein Preſentment*, *Jure Patronatus*, Writ of Right of Ward, Raviſhment of Ward of Body or Lands holden by Knight's Service.

But Seiſin of Homage muſt be alledged within the *St. de Mert.* 8. or *W.* 1. 39. 2 *Inſt.* 96.

And Seiſin in Law is ſufficient ſince the *St.* 32 *H.* 8. 2. *R.* 4 *Co.* 10. 2 *Inſt.* 96. *Vide Seiſin*, (E.)

So

So the *St.* 32 *H.* 8. does not extend to Actions, in which Seiſin need not be alledged: As, Waſt; for the Land is not directly in Demand, and the Plaintiff does not declare of any Seiſin in it. *Bro. St. Lim.* 20, 21. (G. 10.) In which Seiſin is not traverſable.

Annuity; for the Plaintiff does not declare upon a Seiſin, but upon his Grant. *Bro. St. Lim.* 26.

Nor where Seiſin, tho' it be alledged, is not traverſable: As, in Eſcheat, for the Seiſin is not traverſable, but the Tenure. 4 *Co.* 11. *a.*

In a *Ceſſavit*, or Writ of *Reſcous*. 4 *Co.* 11. *a.* *Mo.* 44.

So the *St.* 32 *H.* 8. 2. does not extend to Actions, which go in Diſcharge only, and not to recover any Thing: As, in a *Contra Formam Feoffamenti*, for the Plaintiff only diſcharges himſelf. *Bro. St. Lim.* 15. (G. 11.) Actions for Diſcharge, &c.

A *Monſtraverunt* by Tenants in *Antient Demeſne*. *Bro. upon St. Lim.* 17.

A *Ne injuſte vexes* upon an Encroachment of Services by the Lord. *Bro. upon St. Lim.* 18.

A Writ of Meſne upon a Deed of Acquital. *Bro. St. Lim.* 18.

A *Quo Jure*. *Bro. upon St. Lim.* 19.

A *Warrantia Chartæ*. *Ibid.*

Nor to Error upon a Judgment, &c. till the *St.* 10 & 11 *W.* 3. *Bro. upon St. Lim.* 16. *Vide Ante*, (G. 5.)

Nor to a Writ of Falſe Judgment. *Bro. upon St. Lim.* 16.

Nor to Actions for Contribution: As, a *Contributione facienda*; for he recovers only Damages for Part of the Charge of a Suit. *Bro. upon St. Lim.* 15.

Nor to an Aſſiſe of Nuſance; for Nothing ſhall be recovered, but the Nuſance removed. *Bro. upon St. Lim.* 20.

Nor to a *Quid Juris clamat*, or *Per quæ Servitia*, for Nothing ſhall be demanded but Attornment. *Bro. St. Lim.* 20.

A Writ of Right of Diſclaimer. *Bro. St. Lim.* 23.

Nor to a *Scire facias* to execute a Judgment; for the 32 *H.* 8. mentions only *Scire facias* upon a Fine.

Nor to an Attaint.

So the *St.* 32 *H.* 8. 2. does not extend to Proceedings without any Writ: As, to a Plaint in the Courts of *Wales*, *Cinque Ports*, or other Court. *Bro. St. Lim.* 21. *Vide Ante*, (G. 1.)

So it does not extend to a Corporation Aggregate: As, Mayor and Commonalty; for they do not count upon a Seiſin of any Anceſtor or Predeceſſor, but upon their own Poſſeſſion. *Bro. St. Lim.* 33.

On a Dean and Chapter. *Ibid.*

Otherwiſe a Corporation Sole. *Vide Ante* (G. 1.)

So it does not extend to the King; for he is not bound by the Statute. *Bro. St. Lim.* 67. *Dub. Stanf. Præ. R.* 42. *b.*

Nor to an Avowry, or Cogniſance, as Bailiff to the King. *Bro. St. Lim.* 67.

So, if a Man can make Title to Poſſeſſion within the Time of Limitation, he may maintain it by a Title before the Time of Limitation: As, in an Aſſiſe, if the Plaintiff makes Title at large by Eſcheat forty Years paſt, upon which he entred and was ſeiſed, till a Diſſeiſin by the Defendant within thirty Years. *Bro. St. Lim.* 26.

So, if a Man claims by Preſcription a Thing, which goes in Diſcharge only, it is ſufficient to alledge the Uſage *de Tempore R.* 1. without alledging within ſixty Years: As, if he preſcribes to ouſt from his Common Cattle that were not *levant* and *couchant*. *Bro. St. Lim.* 136. (G. 12.) Preſcription in Diſcharge.

To be diſcharged of Toll. *Bro. St. Lim.* 39.

To drive Cattle to a Pound thro' the Soil of another, without making Amends for the Eſcape. *Bro. St. Lim.* 41.

So, if he claims only an Eaſement: As, Liberty to enter his Land to repair a Gutter. *Bro. St. Lim.* 37.

To ſtop an Aquæduct during the Repair of a Mill. *Bro. St. Lim.* 41, 42.

To have a Way in the Soil of another to Church. *Bro. St. Lim.* 42.

So,

(G. 13.) Or by *Que Eſtate.*

So, if a Man preſcribes by a *Que Eſtate*, and not in him and his Anceſtors, it is ſufficient to alledge *de Tempore R.* 1. without ſaying within ſixty Years: As, if he preſcribes by a *Que Eſtate* to Suit to his Mill. *Bro. St. Lim.* 40.

So, if a Corporation preſcribes to be a Corporation *de Tempore R.* 1. it is well. *Bro. St. Lim.* 43.

So, if a Woman preſcribes to have Dower, tho' her Huſband was attainted of Felony. *Bro. St. Lim.* 45.

(G. 14.) Avowry, *&c.* not for Rent, or Suit.

So an Avowry need not alledge Seiſin within forty Years, unleſs it be for Rent, Suit, or Service: And therefore if a Man avows for Toll due fifty Years paſt, it is well. *Bro. St. Lim.* 64.

Or for an Amerciament in a Leet. *Bro. St. Lim.* 67.

Or for a *Nomine Pœnæ*. *Ibid.*

Aid to make his Son a Knight, or to marry his Daughter. *Bro. St. Lim.* 72, 73.

Or for Relief. 2 *Inſt.* 95.

So, for the Fees of a Knight or Burgeſs of Parliament. *Bro. St. Lim.* 73.

But in an Avowry or Cogniſance for Relief, *&c.* where the Seiſin is traverſable, the Party muſt alledge Seiſin within the Time limited by the *St. de Mert.* 8. *viz. poſt Tranſfretationem H.* 3. *in Gaſconiam.* 2 *Inſt.* 96.

So, it does not extend to a Suit or Service, which by Poſſibility will not fall within the Time of Limitation. *Vide Ante*, (G. 9.)

Nor to a Juſtification in *Replevin*, for the Statute mentions Avowry and Cogniſance only. *Bro. St. Lim.* 67, 68.

(G. 15.) Actions upon Specialty, *&c.*

So the *St.* 32 *H.* 8. 2. does not extend to Actions founded upon a Deed or Specialty: And therefore, if an Avowry be for Rent created by Deed it is not within the Statute of Limitations. *Co. L.* 115. *a.* 2 *Ver.* 235.

As for a Rent-charge.

So, if the Lord confirms the Eſtate of his Tenant to hold by 10*s.* where he held before by 20*s.* in Avowry for the 10*s.* *Cro. Car.* 82.

So, if there be an Avowry for Rent upon a Reſervation; for the Reſervation will be the Title. *Co. L.* 115. *a.*

So, if a Rent be originally created by Act of Parliament. *Cro. Car.* 81.

So, by the *St.* 21 *Jac.* 16. Debt limited to ſix Years after the Cauſe of Action is, when it is not founded upon a Specialty: And therefore, Debt for Rent reſerved by Indenture is not within any Statute of Limitations; for it is founded upon a Specialty. *R. Hutt.* 109.

Nor Debt upon the *St.* 2 & 3 *Ed.* 6. 13. for not ſetting out Tithes; for the Statute is a Specialty. *R. Cro. Car.* 513.

Nor Debt for an Eſcape; for it is founded upon the *St.* 1 *R.* 2. 12. before which an Action upon the Caſe only lay. *R.* 1 *Sand.* 38. *R.* 1 *Lev.* 191. 1 *Sid.* 306.

Nor Debt upon an Award. *Semb.* 1 *Lev* 273. 1 *Sid.* 415. 2 *Sand.* 63, 64.

Nor Debt for a Copyhold Fine; for it is not founded upon a Contract or Lending. 1 *Lev.* 273.

Nor an Action by an Aſſignee of Commiſſioners of Bankrupts. 2 *Lev.* 166.

Nor Debt upon a Tally. *Per Windh.* 1 *Sid.* 306.

Nor an Action againſt a Sheriff for Money levied upon a *Fieri facias*. *R.* 3 *Mod.* 312.

Nor a Suit for a Legacy. *Mod. Ca.* 25.

So the *St.* 21 *Jac.* 16. does not extend to Accounts *Current* between Merchant and Merchant. 1 *Lev.* 287. 3 *Mod.* 312.

Nor to a Bargain between Merchants, when there is no ſtated Account. *Semb.* 1 *Vent.* 90. 1 *Sid.* 465.

Nor to a Suit in Equity by Bill for an Account of Money received upon a Truſt. *R. Ca. Ch.* 26. *R.* 2 *Vent.* 345. *D. Mod. Ca.* 25. *Eq. Abr.* 303.

Nor to a *Rationabili Parte Bonorum*, tho' it ſounds in *Detinue*. *R. Lit.* 342. *D. Mod. Ca.* 26. *R. Hut.* 109.

Nor to a Suit for a Charity. *Eq. Abr.* 304.

So the Statute does not extend, where the Action is commenced in an Inferior Court within Time, tho' it be afterwards removed by *Habeas Corpus*, and there commenced *de novo*. *R.* 1 *Sid.* 228. *Vide Poſt*, (G. 17.)

Nor where the Action is commenced within Time in *B. R.* and afterwards there is a Bill in Equity for the ſame Demand. 2 *Ver.* 695.

The *St.* 21 *Jac.* 16. does not extend to an Action for Words in Slander of a Title. *D. Ray.* 61. *Vide Ante*, (G. 8.)

Nor to an Action for Words, which are not actionable without Special Damage, if the Damage, upon which the Words become actionable, happened within two Years. *R.* 1 *Sid.* 95. *Per Twiſd.* 1 *Sid.* 85. *Ray.* 61. *Cro. Car.* 141.

Nor to *Scandalum Magnatum*. *Lit.* 342. 1 *Sid.* 415.

Nor to an Action for Words founded upon an Indictment, or other Matter of Record. 1 *Sid.* 95.

Nor to an Action commenced in due Time, but not revived, becauſe no Perſon proved the Will of the Defendant, or took out Adminiſtration to him. 2 *Vern.* 695.

(G. 16.) Action by an Infant, &c.

So by the *St.* 21 *Jac.* 16. No Perſon intitled to a *Formedon* or Right of Entry, who, at the Time of ſuch Right of Action or Entry firſt fallen was an Infant, *Feme Covert*, *Non Compos*, in Priſon, or beyond the Seas, ſhall be barred of ſuch Action or Entry, tho' the twenty Years be expired; ſo as he or his Heirs within ten Years after his being of full Age, diſcovert, of ſound Mind, Enlargement out of Priſon, Return into the Realm, or Death, take the Benefit of or ſue forth the ſame, and not after ten Years.

So *by the ſame Statute*, No Perſon intitled to Treſpaſs, *Detinue*, *Trover*, *Replevin*, Account, Debt, Treſpaſs for Aſſault, Menace, Battery, Wounding, or Impriſonment, or Action on the Caſe for Words, ſhall be diſabled from ſuch Actions, by being at the Time of ſuch Cauſe of Action accrued under Age, *Covert*, *Non Compos*, in Priſon, or beyond Seas, ſo as they take the ſame within the Times by the ſaid Statute limited after coming of Age, being diſcovert, of ſane Memory, at large, or returned from beyond Sea.

Nor by the *St.* 4 *Ann.* 16. Any Perſon intitled to Suit for Seamens Wages, *&c.*

And, if the Plaintiff was in *Ireland*, that ſhall be *ultra Mare* within this Statute. *Per Holt*, *Sho.* 91.

So all Actions upon the Caſe are within the Benefit of this Proviſo. *R.* 1 *Sid.* 453. 2 *Sand.* 120. *R.* 2 *Mod.* 72.

Aſſumpſit, tho' it be not named. *F,g.* 81.

So, by the *St.* 4 *Ann.* 16. If any Perſon, againſt whom an Action lies for Seamens Wages, Treſpaſs, *Detinue*, *Trover*, *&c.* (or other Actions mentioned 21 *Jac.* 16.) was beyond Sea at the Time of ſuch Action accrued, the Plaintiff ſhall be at Liberty to bring his Action againſt him within the ſame Time after his Return, as was limited for ſuch Action by the ſaid *St.* 21 *Jac.* 16. and 4 *Ann.* 16.

So it was before. *R.* 1 *Lev.* 143. *Dub.* 3 *Mod.* 312. *R. cont. Sho.* 99. *Acc. Mod. Ca.* 26. *R. acc. per* 2 *J. Cro. Car.* 246, 334. *Richardſon dub. & Cro. cont. Semb. cont.* 2 *Ver.* 694.

[If Plaintiff is in *England* when Cauſe of Action accrues, the Time of Limitation begins to run, tho' he afterwards goes abroad. *Smith* v. *Hill*, *T.* 19 & 20 G. 2. *Wilſ.* 134.]

(G. 17.) Or brought within a Year after Judgment or Outlawry reverſed.

So by the *St.* 21 *Jac.* 16. If Judgment for Plaintiff be reverſed, or arreſted after Verdict, or Defendant be outlawed, and the Outlawry afterwards reverſed, the Plaintiff, his Heirs, Executors or Adminiſtrators may commence a new Action within a Year after Judgment or Outlawry reverſed, and not after.

So if an Action was commenced within ſix Years, and the Plaintiff dies, his Executor or Adminiſtrator may commence a new Action, tho' ſix Years are paſt, and ſhew the Special Matter. *Sal.* 425. *F,g.* 171.

So, if an Action in an Inferior Court within ſix Years be removed by *Habeas Corpus*, and the Plaintiff there declares *de novo* after ſix Years. *R. Sal.* 424.

Yet the new Action by the Executor or Adminiſtrator ought to be recent, and the Space of a Year limited upon a Reverſal or Arreſt of Judgment ſeems a reaſonable Time, and if the Grant of a Probate or Adminiſtration be delayed, it muſt be ſhewn. *R. F,g.* 170, 289.

(G. 18.) Or where Promiſe or Proviſion is made for Payment.

So, if a Man after ſix Years acknowledge the Debt due, and promiſes Payment, it will be out of the Statute of Limitations. *Pr. Cha.* 386.

So, if by his Will he directs all his Debts to be paid. *Pr. Cha.* 385.

Or makes a Proviſion for Payment of his Debts generally. *Ibid.*

Or publiſhes an Advertiſement in the *Gazette*, or other News Paper, That all Debts owing by him, upon Application at ſuch a Place, or to ſuch a Perſon, ſhall be paid. *R. Pr. Cha.* 385.

(G. 19.) Pleading the Statute of Limitations, and the Effect of the Statute.

So a Man barred of an Action by the Statute of Limitations muſt plead it, otherwiſe it ſhall not be intended. *Cont. Cro. Car.* 114. *R. acc. Cro. Car.* 141 160.

So, if a Verdict finds the Action brought ſo many Years after Title accrued, it ſignifies Nothing, if it does not find that no other Action was brought. *Sal.* 422.

So, if a Man be not ouſted, or diſſeiſed, the Statute of Limitations does not take Effect againſt him: As, if a Stranger takes the Profits with him, who has the Right, for twenty Years. *R. Sal.* 423.

So, if a Man be barred of an Action by the Statute of Limitations, he ſhall take Advantage of a Title of Entry, which afterwards accrues. *R. Sal.* 422.

Or, if there be a Contract for an annual Payment, and the Plaintiff ſues for the Arrears for twenty Years, the Statute of Limitations cannot be pleaded to the Whole. *R. Al.* 62.

If *A.* converts Goods beyond Sea, and after ſix Years he returns, and upon Demand refuſes the Delivery, it will be a new Converſion. *Per* 3 *J. Cro. Car.* 246, 334.

So a Man ſhall not be reſtrained in a Court of Equity from Pleading the Statute of Limitations to an Action at Law.

Tho' he exhibits a Bill for Relief in Equity, but is diſmiſſed, and the Time incurs pending his Bill. *R.* 1 *Ch. R.* 205, 214. *Dub.* 3 *Ch. R.* 97.

[A Bill depending in Chancery almoſt ſix Years is not ſuch a Demand as to take a Debt out of the Statute of Limitations. *Anon. H.* 1736. 2 *Atkyns* 1.]

[The Appointment of a Receiver in Chancery will not prevent the Statute of Limitations running on. *Anon. H.* 1737. 2 *Atkyns* 15.]

TENANCY.

Entire Tenancy.

Vide Abatement, (F. 13.)

Several Tenancy.

Vide Abatement, (F. 12.)

TENANT.

Tenant to the Præcipe.

Vide Recovery, (B. 3, 4.)

Tenant in Common.

Vide Abatement, (E. 10.—F. 6.)—*Chancery*, (3 V. 4.)—*Deviſe*, (N. 8.)—*Eſtates*, (K. 8.)

—— by Curteſy.

Vide Copyhold, (K. 1.)—*Eſtates*, (D. 1, 2.)—*Waſt*, (F. 2.)

—— in Dower.

Vide Dower, (C. 1, 2, &c.)—*Waſt*, (F. 2.)

—— in Fee.

Vide Copyhold, (C. 7.)—*Deviſe*, (N. 4.)—*Eſtates*, (A. 1, &c.)—*Officer*, (B. 7.)

—— in Tail.

Vide Chancery, (4 S. 1, &c.)—*Copyhold*, (C. 8, 9.)—*Deviſe*, (H. 8.—N. 5, 6.)—*Diſcontinuance*, (A. 4.)—*Eſtates*, (B. 1, &c. 7, 8, 22, &c. 33.)—*Officer*, (B. 8.)

—— after Poſſibility of Iſſue extinct.

Vide Eſtates, (C. 1, &c.)

—— for Life.

Vide Copyhold, (C. 10.)—*Deviſe*, (N. 7.)—*Eſtates*, (E. 1, &c.)—*Officer*, (B. 9.) *Waſt*, (F. 2.)

—— for Years.

Vide Eſtates, (G. 1, &c.)—*Officer*, (B. 12.)—*Waſt*, (F. 2.)

—— at Will.

Vide Eſtates, (H. 1, &c.)—*Officer*, (B. 11.)

—— by Sufferance.

Vide Eſtates, (I. 1, 2.)

TENDER.

Vide Action upon the Caſe upon Aſſumpſit, (H. 8.)—*Condition*, (L. 4.)—*Pleader*, (2 G. 2.—2 W. 28, 49.—3 K. 23.—3 M. 36.)

TENEMENT.

Vide Grant, (E. 2.)—*Treſpaſs*, (A. 2.)

TENET ET TENUIT.

Vide Pleader, (3 O. 3.)

TENTHS.

(A) Tenths.

THE Tithe, or Tenth of the annual Value of any Benefice was granted to the Pope *circa* 20 *Ed.* 1. according to the Value then taken of every Benefice. 2 *Inſt.* 628. 1 *Rol.* 473.

And this was in Imitation of the Levitical Law, whereby the Levites pay a Tenth to the Chief Prieſt, 2 *Inſt.* 628.

But it ſeems that Tenths were received of the Clergy by Pope *Gregory* 9. *Anno* 1229. 13 *H.* 3. *Forſt.* 12.

And granted by the Clergy to King *R.* 1. *Anno* 1189. for his Expedition againſt the *Turks*. *Sp. Gloſſ. Decimæ Salad.*

By the *St.* 26 *H.* 8. 3. The King ſhall receive as united to the Crown a yearly Penſion amounting to a Tenth of all Profits of every Archbiſhoprick, Biſhoprick, Abbey, *&c.* Deanry, Hoſpital, College, *&c.* Parſonage, Vicarage, *&c.* within this Realm.

And a Commiſſion ſhall go into every Dioceſe to inquire the true yearly Value of all Manors, Lands, *&c.* belonging to any Biſhoprick, *&c.* or other Benefice or Spiritual Promotion: And, after Certificate by any three of the Commiſſioners of the Value and Tax ſet of the Tenth, every Archbiſhop and Biſhop ſhall be charged with levying the ſame within his Dioceſe, and Proceſs ſhall go againſt the Archbiſhop, or Biſhop, for the ſame: And the Biſhop may levy it by Eccleſiaſtical Cenſures, Diſtreſs, *&c.* on any rated in his Dioceſe, whereon no *Replevin*, Prohibition, *Superſedeas* on Excommunication, *&c.* may be allowed.

And the Incumbent, on Default after Demand at his Church by the Biſhop or his Officers, and forty Days Neglect certified into the *Exchequer* under the Seal of the Archbiſhop, Biſhop, *&c.* ſhall be deprived *ipſo facto*. By the *St.* 2 *&* 3 *Ed.* 6. 20. of ſuch Benefice only.

And by ſuch Certificate the Archbiſhop or Biſhop ſhall be diſcharged for ſo much, and Proceſs ſhall go againſt the Incumbent.

And by the *St.* 32 *H.* 8. 22. On the Oath of an Archbiſhop, *&c.* charged with Collection of the Tenth, That he cannot for ſufficient Cauſe alledged levy any Part of the Tenth charged, and no Matter ſhewn to the Contrary by the King's Serjeant or Attorney, the *Exchequer* may diſcharge the Accountant upon ſuch Allegation, or may award a Commiſſion to inquire the Truth, and on Return, *&c.* diſcharge him.

But by the *St.* 27 *H.* 8. 8. Every Spiritual Perſon on his Compoſition, *&c.* for his Firſt-fruits ſhall have a Deduction of his Tenth for that Year out of his Firſt-fruits; but ſhall anſwer the Tenth to the King.

And if a Succeſſor be charged with any Tenth, Arrear at the Death of his Predeceſſor, he may diſtrain the Goods of the Predeceſſor, remaining on his Benefice, and, on Non-payment in twelve Days after, cauſe them to be appraiſ-

ed

ed by two or three ſworn Appraiſers, and ſold for Satisfaction of the Arrears and his Coſts; or may ſue by Bill in *Chancery*, or Action of Debt.

So, before a Certificate of Non-payment of Tenths, there ought to be an expreſs Demand by a Man authorized by the Biſhop: And therefore a Demand by an Apparitor is not ſufficient. *R. Cro El.* 80. *Mo.* 915. *R. Mo.* 541.

Or Sub-collector, *&c.* *R. Sav.* 1.

Nor a Demand to pay to another, as his Deputy. *Cro. El.* 81. *R. Sav.* 1.

Or at any other Place than his Houſe or Church. *Cro. El.* 81. *Mo.* 915.

Or his Stall in the Choir, where the Demand is made of a Dignitary there. *Sav.* 1.

So a Certificate of Non-payment is traverſable, if there was not a due Demand, *&c.* *Cro. El.* 80. *Mo.* 915. *R. Mo.* 541.

And if there be Payment after Demand, and before Certificate, it will be void. *R. Sav.* 26.

(B) Annates.

THE Annates or *Primitiæ* were the Value of every Benefice for the firſt Year, which was paid to the Pope by all Archbiſhops and Biſhops, and began *Temp. Bonifacii* 9. or *Johannis* 22. *Cod. J. Eccl.* 871. *Spel. Gloſſ. Annates.*

By the *St.* 6 *H.* 4. 1. It was Enacted, That any, who paid to the Chamber of *Rome* for Firſt-fruits more than was accuſtomed, ſhould forfeit, *&c.*

By the *St.* 25 *H.* 8. 20. No Archbiſhop or Biſhop ſhall pay *Annates* or other Penſion, *&c.* to the See of *Rome.*

By the *St.* 26 *H.* 8. 3. (Repealed by the *St.* 2 & 3 *Ph. & M.* 4. but revived by the *St.* 1 *El.* 4.) Every Archbiſhop, Biſhop, Abbot, Maſter of College, Hoſpital, Dean, Prebend, Parſon, Vicar or other having any Spiritual Promotion, to whoſe Gift ſoever belonging, before any Poſſeſſion, or medling with the Profits of the Benefice, ſhall pay or compound to pay to the King's Uſe on good Sureties the Firſt-fruits, or one Year's Profit of his Benefice, *&c.*

And the Chancellor, Maſter of the *Rolls*, or other, to be named by Commiſſion under the Great Seal, may examine the true Value, *&c.* and compound or agree for a Rate for the Firſt-fruits.

An Obligation for Payment ſhall be of the ſame Effect as a Statute-Staple; and if any enter into a Benefice, *&c.* without paying or agreeing, *&c.* he ſhall be taken as an Intruder, *&c.* and being convicted by Verdict, Confeſſion, *&c.* before the Lord Chancellor or other Commiſſioners, ſhall pay for every Offence double the Value of the Firſt-fruits.

And all Firſt-fruits payable to the Biſhop of *Norwich*, or any other but the King, ſhall ceaſe.

By the *St.* 28 *H.* 8. 11. The Year for which Firſt-fruits are paid ſhall be computed from the Avoidance of the Benefice or Spiritual Promotion.

And by the *St.* 6 *Ann.* 27. Biſhops ſhall be allowed four Years from the Reſtitution of Temporalties to pay the Firſt-fruits, paying a fourth Part of the Compoſition each Year, and if he, *&c.* be removed, ſhall be diſcharged of all not then payable.

By the *St.* 2 & 3 *Ann.* 11. The Queen by Letters Patent may grant to the Corporation, thereby to be erected, all the Firſt-fruits and Tenths, *&c.* for the Maintenance of Parſons, Vicars, and Curates of the Church of *England.*

And all former Statutes for Payment, Levying, Diſcharging, *&c.* ſhall be in Force.

And one Bond only ſhall be given for four Payments of Firſt-fruits, and no fifth Bond.

And the ſaid Firſt-fruits and Tenths ſhall be anſwered and paid according to ſuch Rates and Proportions only, as the ſame have been heretofore uſually rated and paid.

The Value of Benefices was aſſeſſed 20 *Ed.* 1.

But the Valuation, according to which the First-fruits and Tenths are computed, was made 26 *H.* 8. pursuant to the above Statute, and now remains in the *Exchequer*. 4 *Inst.* 120.

But by the *St.* 26 *H.* 8. 3. A Parson, or Vicar, whose Benefice exceeds not eight Marks, shall not pay First-fruits, unless he lives three Years therein.

Nor by the *St.* 1 *El.* 4. Vicarages of 10*l. per Annum*, or Parsonages of 10 Marks *per Annum*, or under. 4 *Inst.* 120.

Nor by the *St.* 5 *Ann.* 24. Benefices not exceeding 5*l. per Annum* improved Value, which have Cure of Souls. Conf. by the *St.* 6 *Ann.* 27.

So by the *St.* 26 *H.* 8. 17. A Lessee of Manors, Lands, *&c.* of a Bishop or other Spiritual Person, shall not be chargeable to the King, but his Lessor shall be charged for First-fruits, notwithstanding any Covenant, *&c.* to the Contrary.

By the *St.* 27 *H.* 8. 8. Commissioners authorized to compound for First-fruits may deduct the Tenth (which yet shall be paid the King.)

The Demand and Collection of First-fruits and Tenths by the Pope was prohibited. *Temp. Ed.* 3. *R.* 2. *&* *H.* 4. 4 *Inst.* 120.

By the *St.* 32 *H.* 8. 45. The Court of First-fruits and Tenths was erected, but repealed by the *St.* 1 *Mar.* 10. and not revived by the *St.* 1 *El.* 4.

(C) Procurations.

PRocurations or Proxies are paid by the Clergy to the Bishop or Archdeacon in Recompence of their Visitation. *Dav.* 3. 6.

When the Charge of the Visitation became excessive, a Sum was paid and accepted by antient Composition in Lieu of it. *Dav.* 3.

And therefore every Benefice with Cure is subject to Procuration or Proxy.

Tho' the Composition does not appear; for it may be claimed by Prescription or Grant. *Hard.* 181.

But if there be a Parsonage, and also a Vicarage endowed, there shall be one Procuration paid for both.

So no Procuration shall be paid for a Donative; for it is exempt from the Visitation of the Ordinary.

Nor for a Chapel which depends upon a Parsonage.

Proxies or Procurations are collateral to the Land, and not extinguished by Unity of Possession. *Hard.* 388.

If Proxies or Procurations are refused, Remedy lies in the Ecclesiastical Court, for their Jurisdiction is saved by the *St.* 34 *&* 35 *H.* 8. 19. *Hard.* 181, 388.

So a Bill in Equity lies for the Recovery. *Dub. Hard.* 181.

So there shall be a Remedy at Law; if due by Grant or Prescription. *Hard.* 181.

(D) Pensions.

Vide Prohibition, (G. 11.)

SO, upon Resignation of a Dignity or Spiritual Promotion, the Person, to whom the Resignation is made, sometimes grants a Pension to his Predecessor.

But by the *St.* 26 *H.* 8. 3. *S.* 22. A Moiety of such Pensions as exceeded 40*l.* was discharged, and the Tenth of all other Pensions.

And no such Pension *in futuro* must exceed the third Part of the Value of the Dignity or Spiritual Promotion.

TENURE.

(A) All Lands are held of the King.

BY what Tenures Lands are held, *Vide in Homage.*
To what Services they are ſubject, *Ibid.*
To whom the Seigniory belongs, and the Incidents to it, *Vide in Seigniory*, (A.)
All Lands and Tenements in the Hands of a Subject are held immediately or mediately of the King. *Co. L.* 1. *a. Wri. Int.* 138.
And therefore, tho' the King releaſes to his Tenant all Services, yet he holds of him. 8 *H.* 7. 12. *b. R.* 9 *Co.* 123.
So, if an Office finds a Dying ſeiſed, but of what Tenure is ignorant, and thereupon a *Melius Inquirendum* finds in the ſame Manner, that is ſufficient to intitle the King; for it ſhall be ſuppoſed that the Tenure is of him. *R.* 2 *Cro.* 41.
So Liberties and Things in *Groſs* may be granted to be held of the King, tho' not of a Subject. *Mo.* 168.

(B) But the King holds of no One.

BUT the King holds of no One. *Co. L.* 1. *b.*
If Lands held of the King, or of any other, are forfeited to the King for Treaſon, the Tenure is extinct. *Bro. Parliament* 77. 6 *Co.* 5. *b.* 2 *Rol.* 514. *l.* 3.
And tho' the King afterwards grants the Lands to another, the Tenure ſhall not be revived in the Hands of the Patentee without expreſs Words.
Tho' there be a Saving of all Rights, Rents, Services, *&c.* for theſe Words do not revive it. *Bro. Parl.* 77.
So, if the King purchaſes Land of another, the Tenure is extinct. 2 *Rol.* 513. *B.*
Tho' the Tenant enfeoffs the King, and retakes the Eſtate from him. 2 *Rol.* 514. *l.* 1.
So, if Tenant *Paravail* enfeoffs the King, the *Meſnalty* is extinct; for the *Meſnalty* and Eſtate *Paravail* are but one Eſtate. *Dy.* 154.
So, if Tenant *Paravail* makes a Gift in Tail, Remainder to the King. *R. Dy.* 154. *b.* 2 *Rol.* 514. *l.* 5.
So Tenure of Chauntries and other Lands given to the King by the *St.* 1 *Ed.* 6. 14, *&c.* is extinct, tho' there be a Saving for the Rights of all Strangers, *&c. R. Dy.* 313. *a. R.* 1 *And.* 45.
Yet the Lord of Chauntries, *&c.* given to the King, may avow upon the Land for his Rent, tho' not upon the Perſon, as within his Fee. *Dy.* 313. *a.*
So, if the King grants Lands forfeited, *&c.* the Tenure may be revived by proper Words: As, if he grants *tenend' de Capitali Domino per Servitia debita. R.* 6 *Co.* 6. *a. Bro. Tenure* 3.
Feudum originally was a Portion of Land granted by a Prince, *&c.* to his Officers or Soldiers, upon a Conpact, expreſs or implied, to render to his Lord Service and Aid. *Wri. Intr.* 7.
And was revocable at Will, afterwards granted for Years, afterwards for Life, and afterwards in Perpetuity. *Wri. Int.* 14.
Vide more concerning *Tenure* in *Dignity*, (C. 2.)---*Juſtices of Peace*, (A. 2.) ---*War*, (B. 1.)

Tenure in Burgage.

Vide Burrough, (E.)

TERM

TERM OF YEARS.

Vide Eſtates, (G. 1, &c.)—*Pleader*, (2 Y. 16.)—*Receipt*, (A. 1.)—*Recovery*, (B. 8.)—*Remitter*, (C. 7.)

—— to attend Inheritance.

Vide Chancery, (4 G. 5.)

Truſt of a Term.

Vide Chancery, (4 W. 19, &c.)

TERMOR.

Vide Receipt, (A. 1.—B. 2.)——*Recovery*, (B. 8.)

THE TERMS.

Vide Adjournment, (A.)——*Temps*, (C. 1, &c.)

TERRETENANTS.

Vide Pleader, (3 L. 14.)

TESTAMENT.

Vide Deviſe.

TESTAMENTARY MATTERS.

Vide Prohibition, (G. 16.)

TESTATOR.

Vide Adminiſtration, (B. 11.)—*Chancery*, (3 G. 1.)—*Deviſe*, (N. 21.)

TESTATUM CAPIAS, or FIERI FACIAS.

Vide Proceſs, (E. 7.)

TEST ACT.

Vide Officer, (K. 7.)—*Pleader*, (2 S. 28.)

TESTE OF A WRIT.

Vide Abatement, (H. 14.)—*Mandamus*, (C. 4.)

TESTMOIGNE.

(A) Witneſs; Who ſhall not be.

[IN Acts of Parliament which direct Convictions on the Oaths of Witneſſes, the Epithet "*credible*" is added, but by no Means intended to ſignify "competent:" *That* is implied in the Term "*Witneſs.*" But it is intended (from abundant Caution) to declare, that tho' competent Witneſſes ſwear poſitively, *their Credibility is to be weighed*; and if the Magiſtrate thinks the Evidence *not credible*, he ought not to convict. *D. per Ld. Mansfield. Wyndham* v. *Chetwynd, M.* 31 *G.* 2. 1 *B. M.* 414.]

[A Perſon who apprehends himſelf intereſted, tho' ſtrictly he is not. *Fotheringham* v. *Greenwood, M.* 5 *G. Str.* 129.]

[A Servant, for beating of whom the Maſter has brought Treſpaſs. *Dunſley* v. *Weſtbrowne, H.* 7 *G. Str.* 414. *Sed vide Duel* v. *Harding, T.* 10 *G. Str.* 595. *contra. And ſo in Lewis* v. *Foy, M.* 6 *G.* 2. *Str.* 944.]

[Guardian on Record. *Clutterbuck* v. *Ld. Huntingtower, C. B. H.* 8 *G. Str.* 506.]

[*Prochein Amy* cannot be Witneſs for the Infant. *Hopkins* v. *Neale, H.* 9 *G.* 2. *Str.* 1026.]

[Creditor of Bankrupt to prove him a Gameſter. *Shuttleworth* v. *Bravo, H.* 8 *G. Str.* 507.]

[The Party to an uſurious Contract cannot be a Witneſs on an Action to prove the Repayment of the Money. *Shank* v. *Payne, T.* 11 *G. Str.* 633.]

[The Bailiff who had the Warrant, not allowed to prove an Attempt to arreſt, on Action againſt the Sheriff for a falſe Return. *Powel* v. *Hord, M.* 12 *G. Str.* 650. 2 *Ld. Raym.* 1411.]

[On an Information for importing Teas contrary to the Act of Navigation, the Maſter of the Ship produced by Defendant, but not allowed; becauſe the Ship is forfeited by the Act, tho' there was no Information againſt it. *Fuller* v. *Jackſon, M.* 1723. *Bunb.* 140. [Leading Caſe.]

[*E. Contra,* Maſter of a Cart, though forfeited for running Goods, allowed. *Ibid.*]

[On an Information for importing *India* Silks, Maſter of the Ship not allowed, tho' no Proſecution commenced againſt him, becauſe an Abettor, and liable to 500*l.* Penalty. *Rickſon* v. *Sandforth, H.* 1724. *Bunb.* 140.]

[On Information for importing Brandy in unſizeable Caſks, Maſter of the Ship not allowed, tho' no Information filed againſt him; for he is liable to 100*l.* Penalty for breaking Bulk. *Spong* v. *Faſting, M.* 1725. *Bunb.* 203.]

[Bankrupt cannot prove his own Act of Bankruptcy. *Field* v. *Curtis, H.* 2 *G.* 2. *Str.* 829.]

[What Bankrupt ſaid of his bad Circumſtances, not Evidence, unleſs ſpoken when he was removing his Goods, *&c. B. R. H.* 267.]

[A Quaker cannot be Witneſs on an Appeal. *Caſtell vid.* v. *Bambridge, H.* 3 *G.* 2. *Str.* 854.]

Nor can his Affirmation be read on a Motion for an Information for a Miſdemeanor. *Rex* v. *Wych, T.* 4 *G.* 2. *Str.* 872.]

[Nor on a Motion for an Attachment, unleſs by Conſent. *Rex* v. *Bell, P.* 11 *G.* 2. *Andr.* 200.]

[But if Defendant is a Quaker, his Affirmation may be read to exculpate himſelf; but a Quaker's collateral Evidence in Exculpation of a third Perſon, when the Quaker is not charged, ſhall not be read. *Rex* v. *Gardner, H.* 1 *G.* 3. 2 *B. M.* 1117.]

[And if a Rule is made to anſwer the Matter in his Affirmation, it ſhall be diſcharged. *Oliver* v. *Lawrence, H.* 6 *G.* 2. *Str.* 946.]

[On Indictment for Perjury for denying in an Anſwer an Agreement not to put a Note in Suit, the Giver of the Note, Defendant at Law, and Plaintiff in Equity, cannot be Witneſs. *Rex* v. *Nunez*, *P.* 9 *G.* 2. *Str.* 1043. *B. R. H.* 265.]

[Wife's owning Receipt of Money due to Huſband, for Wages earned by her, no Evidence in an Action brought by the Huſband. *Hall* v. *Hill*, *T.* 11 *G.* 2. *Str.* 1094.]

[Wife ſhall not be a Witneſs for or againſt her Huſband, though with Conſent. It is to preſerve the Peace of Families. *Barker* v. *Dixie*, *P.* 9 *G.* 2. *B. R. H.* 264.]

[The Wife of one Defendant cannot be Witneſs for the other, on an Indictment againſt two. *Rex* v. *Frederick*, *T.* 11 *G.* 2. *Str.* 1095.]

[Defendants in Ejectment againſt whom a Verdict has been given, cannot be Witneſſes for the Proſecutor, on Indictment for Perjury at that Trial. *Rex* v. *Ellis*, *M.* 12 *G.* 2. *Str.* 1104.]

[Informer who is to have the Penalty, his Oath is not Evidence. *Rex* v. *Moore*, *M.* 9 *G.* 2. *Rex* v. *Collins*, *B. R. H.* 176.]

[The Party who ſupports the Cauſe cannot be a Witneſs. *Hopkins* v. *Neale*, *H.* 9 *G.* 2. *B. R. H.* 202.]

[Agreement in Writing that Defendant ſhall have the Graſs of Cloſe *A.* Action for ſpoiling Graſs in Cloſe *B.* Parol Evidence ought not to be admitted to ſhew there was a Parol Agreement that he ſhould have the Graſs of *B.* alſo *Ld. Mansfield* allowed it. *C. B.* granted new Trial. *Meres* v. *Anſell*, *M.* 12 *G.* 3. 3 *Wilſ.* 275.]

[The true Notion of who may be a Witneſs, may be gathered from the Queſtions on the *Voire dire*, *viz.* whether he is to get or loſe by the Event of the Suit; if he can anſwer that fully, he muſt be a Witneſs. *Per Hardwicke* C. J. *on Conſideration*. *Rex* v. *Bray*, *H.* 10 *G.* 2. *B. R. H.* 358.]

[To be a Witneſs one need not be abſolutely indifferent, as to be a Juror; for the Credibility of a Witneſs may be objected to, but not ſo of a Juror. *Ibid.*]

[A Man's having a bare Authority, without Intereſt, will not hinder his being a Witneſs, if he is not a Party. *Ibid.*]

[An Office is always an Intereſt. *Ibid.*]

[A Man may be a Witneſs, tho' he is liable to an Information for a paſt Fact to which the Trial relates. *Ibid.*]

[An Eliſor named by a former Mayor, to return a Jury of Freemen to elect a new Mayor, or one of the Jury ſo returned, may be a Witneſs for the new Mayor, Defendant in Information *Quo Warranto*. *Ibid.*]

[A Wife may be Witneſs to prove her Daughter's Wedding Cloaths delivered on her Huſband's Credit. *Williams* v. *Johnſon*, *H.* 8 *G.* *Str.* 504.]

[Wife of *Prochein Amy*, allowed. *Denniſon* v. *Spurling*, *B. R.*]

[In an Action againſt the Maſter, the Servant to whom the Goods were delivered allowed to prove Payment by a third Perſon. *Brownſon* v. *Avery*, *H.* 8 *G.* *Str.* 507.]

[Wife's Declaration as to nurſing a Child, good to charge her Huſband. *Anon.* *T.* 8 *G.* *Str.* 527.]

[Infant declares *per Guardian*, he being liable to Coſts; what he ſaid, may be given in Evidence by Defendant. *James* v. *Hatfield*, *H.* 9 *G.* *Str.* 548.]

[Wife of Plaintiff admitted to prove her Huſband died before Judgment, aſſigned for Error by Defendant. *Dale* v. *Johnſon*, *T.* 9 *G.* *Str.* 508. *Sed. Q.*]

[*A.* delivers *South-Sea* Bonds to *B.* from whom they are ſtolen; *C.* a Clerk ſtops them, when *D.* brought them for the Intereſt; *D.* brings Trover againſt *C.* who at Trial calls *B.* to prove the Property in *A.* but he was refuſed, having made himſelf liable to Coſts in the Action, by giving Bond to indemnify the Company for ſtopping the Bonds; then *A.* brought Trover againſt *D.* and *B.* was admitted as a Witneſs. *Ball* v. *Boſtock*, *M.* 10 *G.* *Str.* 575.]

[Where two Qualifications are neceſſary to be elected, he who has only one of them, may be a Witneſs to prove it. *Stephenſon* v. *Nevinſon*, *P.* 10 *G.* 2. *Ld. Raym.* 1353. *Str.* 583.]

[On

[On an Indictment for destroying a Note, the Proprietor may be a Witness. *Rex* v. *Moise*, *T.* 10 *G.* *Str.* 595.]

[Wife may be Witness against her Husband indicted for an Assault on her. *Rex* v. *Azire*, *T.* 11 *G.* *Str.* 633.]

[If two are indicted, one submits and pays a Fine, he may be Witness for the other. *Rex* v. *Fletcher*, *T.* 11 *G.* *Str.* 633.]

[A Goldsmith's Servant, who had overpaid a Note, allowed. *Martin* v. *Horrell*, *M.* 11 *G.* *Str.* 647.]

[Creditors to prove Defendant not intitled to the Benefit of an Insolvent Act, allowed. *Norcott* v. *Orcott*, *M.* 12 *G.* *Str.* 650.]

[Prosecutor on an Indictment, tho' he has laid a Wager that he convict Defendant, allowed. *Rex* v. *Fox*, *M.* 12 *G.* *Str.* 652.]

[On an Indictment for forging a Letter of Attorney, whereby he transferred *A.*'s Stock, *A.* may be a Witness. *Rex* v. *Rhodes*, *M.* 13 *G.* *Str.* 728.]

[Vendor without Covenant for good Title, or Warranty, may be Witness to prove Title of Vendee. *Busby* v. *Greenslate*, *T.* 7 *G.* *Str.* 445.]

[In an Action by a Father for deflowering his Daughter, *per quod Servitium amisit*, the Daughter may be Witness. *Cock* v. *Wortham*, *M.* 10 *G.* 2. *Str.* 1054.]

[But she ought not to give in Evidence a Promise of Marriage. *Tullidge* v. *Wade*, *P.* 9 *G.* 3. 3 *Wils.* 18.]

[Member of a Corporation who has acted under the Right claimed, but has no Interest, may be a Witness to prove the Usage. *Rex* v. *Robins*, *H.* 10 *G.* 2. *Str.* 1069.]

[On Action brought against a Master, for his Carman's driving his Cart negligently, *per quod*, *&c.* the Carman may be Witness for his Master. *Jarvis* v. *Hayes*, *M.* 11 *G.* 2. *Str.* 1083.]

[Creditor of a Bankrupt who has released his Debt to the Assignees, but not to the Bankrupt, may be Witness to prove Bankruptcy. *Ambrose* v. *Clendon*, *P.* 9 *G.* 2. *B. R. H.* 267.]

[A Mother may be Witness to prove her Marriage, when her Son's Legitimacy is in Question. *Stapleton* v. *Stapleton*, *T.* 9 *G.* 2. *B. R. H.* 277.]

[A Person indicted pleading Misnomer, and for Want of Replication discharged, may be Witness for the other Defendants. *Rex* v. *Sherman*, *T.* 9 *G.* 2. *B. R. H.* 303.]

[A Quaker's Affirmation is good to prove the Service of a Rule to shew Cause why an Appointment of Overseers should not be quashed, for it is not a criminal Prosecution, tho' on the Crown Side, and the Rule in the King's Name. *Rex* v. *Turner*, *H.* 18 *G.* 2. *Str.* 1219.]

[The Party supposed to be defrauded may be a Witness, on an Indictment for Perjury. *Rex* v. *Broughton*, *P.* 18 *G.* 2. *Str.* 1229.]

[The Borrower of the Money is a competent Witness to prove the usurious Contract and the Repayment of the Money. *Abrahams* v. *Bunn*, *T.* 8 *G.* 3. 4 *B. M.* 2251.]

[Objection to Competency is too late after Witness sworn in chief, examined and cross-examined. *Ibid.*]

[Interest goes to the Competency.—Influence to the Credit only; and where the Matter is doubtful the Objection goes to the Credit. *Ibid.*]

[A Man may be Witness in a criminal Prosecution where the Question is the same with that in a Civil Cause in which he is interested, unless the Judgment in the first can be given in Evidence on the second. *Ibid.*]

[A Factor who sells for Plaintiff and to have Poundage may be Witness to prove the Contract. *Dixon* v. *Cooper*, *M.* 10 *G.* 3. 3 *Wils.* 40.]

[If Bail is a *subscribing* Witness, he shall be obliged to give Evidence, otherwise not. *Hawkins* v. *Perkins*, *M.* 7 *G.* *Str.* 406.]

[If Defendant's Bail is a material Witness, the Court will permit his Name to be struck out, on another entering into the Recognizance in his Room. *Collett* v. *Jennis*, *T.* 8 *G.* 2. *B. R. H.* 133.]

[The Court will not give Leave to ſtrike out the Name of a Defendant in Ejectment, on Affidavits that he is not intereſted in the Premiſſes, and is a material Witneſs for the other Defendants, eſpecially if the Jury Proceſs and Subpœna's have iſſued. *Barrington* v. *Parkhurſt*, *M.* 9 *G.* 2. *B. R. H.* 162.]

[Attorney preſent at ſwearing an Anſwer in Chancery, is not obliged to be a Witneſs, on an Indictment for Perjury in the Anſwer. *Rex* v. *Watkinſon*, *M.* 13 *G.* 2. *Str.* 1122.]

[In order to take off the Teſtimony of a Perſon joined in the *Simul cum*, Evidence muſt be given of his being ſome Way concerned in the Fact, that Proceſs has iſſued againſt him, and Endeavours been uſed to take him. *Lloyd* v. *Williams*, *P.* 8 *G.* 2. *B. R. H.* 123.]

[He may be admitted, if Plaintiff does not ſhew he has been ſerved. *Hill* v. *Fleming*, *P.* 9 *G.* 2. *B. R. H.* 264.]

[If a Witneſs is examined by the Party producing him to one Point only, the adverſe Party may croſs-examine him to that, but not uſe him to prove a different Fact. *Dean of Ely* v. *Stewart*, *T.* 1740. 2 *Atkyns* 44.]

[The Party who excepts to a Witneſs may call him afterwards. *Atwood* v. *Dent*, *M.* 8 *G.* *Str.* 480.]

[A Father, who has gained his Freedom in a Borough by Servitude, is a good Witneſs to prove a Cuſtom whereby his eldeſt Son is intitled to his Freedom. *Rex* v. *Mayor of Oakhampton*, *T.* 25 & 26 *G.* 2. 1 *Wilſ.* 332.]

[The Confeſſion of a Perſon on his Death-Bed, of a Forgery committed by him, of an Inſtrument atteſted by him, is Evidence (to ſet aſide that Inſtrument) proper to be left to a Jury. *Wright* v. *Littler*, *M.* 2 *G.* 3. 3 *B. M.* 1244.]

[Leave to examine an ancient Witneſs before a Judge, cannot be without Conſent. *Barnes* 447.]

(A. 1.) *Non Compos.*

EVERY Witneſs muſt be Credible.

And therefore, a Man of *Non-ſane* Memory ſhall not be allowed as a Witneſs. *Co. L.* 6. *b.*

As, an Idiot.

A Lunatick during his Lunacy.

So One within Age of Diſcretion. *Co. L.* 6. *b.*

As, an Infant, who does not know the Nature of an Oath.

[Infant under ten, very ſeldom, and under nine never, admitted to be a Witneſs, either in capital Caſes or leſſer Offences. *Rex* v. *Travers*, *Per Gilbert* C. B. *and Raymond* C. J. *P.* 12 *G.* *Str.* 700.]

So, in an *Ætate probanda*, a Witneſs ſhall not be allowed under the Age of 42 Years. *Bro. Teſtm'* 30.

But a Lunatick may be a Witneſs *in lucidis Intervallis.*

(A. 2.) Infidel.

* *Vide cont.* 2 *Stra.* 1140.

So generally an Infidel ſhall not be a Witneſs. *Cp. L.* 6. *b.**

[A Mahometan may be a Witneſs, and ſworn on the Koran. *At Council, preſent two Chief Juſtices.* *Fachina* v. *Sabine*, *M.* 12 *G.* 2. *Str.* 1104.]

[An Infidel, Pagan Idolater, may be a Witneſs; and his Depoſition, ſworn according to the Cuſtom of the Country where he lives, read in Evidence. *Ormichund* v. *Barker*, *H.* 18 *G.* 2. *Wilſ.* 84. 1 *Atkyns* 19. *Note, Ryder, Attorney-General*, in ſupport of this, cited the Covenant between *Jacob* and *Laban*, in *Geneſis* xxxi, and ſaid, that *Laban* ſware by *falſe* Gods; which was admitted by the other Side, and by the Court: And yet it is not true; for *Laban* ſware by "the God of *Abraham*, the God of *Nahor*," (who was *Abraham*'s own Brother, and the Anceſtor of *Laban*, as *Abraham* was of *Jacob*) "the God of their Father," *i. e. Terah*, which plainly means the true God, whom they both acknowledged: thus, the Almighty is frequently called the God of *Abraham*, the God of *Iſaac*, and the God of *Jacob*.]

(A. 3.)

(A. 3.) Perſon convicted of Treaſon or Felony.

So a Perſon attainted, or convicted, of Treaſon or Felony, ſhall not be a Witneſs. *Co. L.* 6. *b.*

Or of Piracy. *R.* 2 *Rol.* 686. *l.* 27.

Tho' it be to excuſe a Man accuſed falſely by him and by the Inſtigation of another. *R.* 2 *Rol.* 686. *l.* 30.

But a Perſon pardoned for his Treaſon or Felony will be a good Witneſs. *Per* 3 *J.* 2 *Cont. Ray.* 369. *Dub. Ray.* 380. *R. cont.* 2 *Bul.* 154. *R. acc.* for the Pardon takes away *Pœnam et Reatum.* 1 *Vent.* 349.

So, if he be burnt in the Hand for Felony; for that is *quaſi* a Pardon by Statute. *R. Ray.* 369. *R. Ray.* 380. *R. Keil.* 37. *Vide Poſt*, (A. 4.)

So an Accomplice in the ſame Crime before Conviction. *R. Keil.* 17.

Tho' he has a Promiſe of Pardon, and the Promiſe be not made for his Evidence. *Keil.* 18.

(A. 4.) Or any infamous Man.

So a Man infamous in any Reſpect ſhall not be a Witneſs: As, if a Champion in a Writ of Right be Recreant. *Co. L.* 6. *b.*

If a Man be attainted for a falſe Verdict. *Co. L.* 6. *a.*

By the *St.* 5 *El.* 9. If convicted for Perjury or Subornation, till the Judgment reverſed.

So, if convicted of Perjury at the Common Law. *Co. L.* 6. *b.*

So, if convicted of Forgery upon the *St.* 5 *El.* 14. or otherwiſe. *Co. L.* 6. *b.* 5 *Mod.* 74.

Or, of a Conſpiracy at the Suit of the King. *Co. L.* 6. *b.*

Convict in *Præmunire*. *Ibid.*

So, if he had an infamous Judgment, and upon that ſtood in the Pillory, or Tumbrel. *Co. L.* 6. *b.* 5 *Mod.* 74. *Sal.* 461.

Or be ſtigmatized, or loſe his Ears. *Co. L.* 6. *b.*

Or be whipt for *Petit Larceny*. *Per St. John at Suff. Aſſ.* 1657.

So, if he have Judgment of the Pillory, tho' he did not ſtand there. *R.* 3 *Lev.* 426. *Sal.* 689.

Or be convicted of Barretry, tho' only fined; for the Crime makes the Infamy. *R. Sal.* 690.

So, tho' pardoned after a Conviction of Perjury, he ſhall not be a Witneſs. 1 *Vent.* 349. *Sal.* 689.

So a Pardon of any Crime, after Examination, does not make his Teſtimony good. *R.* 3 *Lev.* 426.

So an *Affidavit* of ſuch a Perſon in any Cauſe ſhall not be admitted regularly.

But a Conviction of Felony, Perjury, *&c.* does not take away his Teſtimony, unleſs the Record be produced.

So a Record, by which he is found Guilty by Verdict, is not ſufficient, if Judgment be not entred. *R.* 1 *Sid.* 51.

So, if he ſtood in the Pillory, where the Judgment was not infamous, it does not take away his Teſtimony: As, for a Libel, or Words in Slander of the Government. *R.* 3 *Lev.* 426. *Semb.* 5 *Mod.* 75.

So a Man convicted of Forgery upon the *St.* 1 *H.* 5. 3. ſhall be a Witneſs. *Co. L.* 6. *b.*

Or of Barretry. *Per Glin and Newd, M.* 1657. *B. R. ſed Maina. cont. fortiter. R. cont. Sal.* 690.

So a Man outlawed in a Perſonal Action. *Co. L.* 6. *b.*

So the Pardon of an Offence enables him to be a Witneſs, except in Perjury, where the Diſability is Part of the Judgment: As, if the Felony, *&c.* of which he is convicted, be pardoned. *Per* 3 *J.* 2 *cont. Ray.* 369. *Cont.* 2 *Bul.* 154. *Dub. Ray.* 380. *R. acc.* 1 *Vent.* 349. *R. Sal.* 689.

So, if burnt in the Hand for Felony, for it is *quaſi* a Statute Pardon. *R. Ray.* 369, 380. *Str.* 388. *per Trev.* 7. *An.*

And Proof of the Record whereby Clergy is granted is ſufficient, without proving that he was burnt. *Per Trev.* 7 *An.*

So a Pardon of Perjury by Act of Parliament enables him. *Per Holt, Sal.* 689.

So, if there be not a legal Objection againſt a Witneſs, other Scandal to his Credit ſhall not be allowed: As, that he is a Whore-maſter, Drunkard, *&c. Mar. pl.* 136.

So an *Affidavit* of one convicted of Perjury, *&c.* ſhall be allowed to prove a Male Practice againſt him. *Sal.* 461.

[The Affidavit of one convicted of Forgery, cannot be read to ſupport a Complaint, but it may to defend himſelf againſt a Complaint. *Walker* v. *Kearney, H.* 14 *G.* 2. *Str.* 1148.]

Vide more concerning *Witneſſes* in *Chancery*, (P. 7.)—*Evidence*, (A. 3.)—*Fait*, (B. 4.)—*Parliament*, (E. 11.—L. 25.)—*Trial*, (B. 5.)

THREATS.

Vide Battery, (D)—*Pleader*, (2 W. 20)

TIME.

Vide Temps.

TITHES.

Vide Diſmes.

TITLE.

Vide Aſſiſe, (B. 17, 20.)—*Maintenance*, (A. 5.)—*Pleader*, (C. 34, 36, 40, 41, 42, 49.—E. 21.—F. 13.—3 M. 40.—3 O. 2.)—*Probibition*, (F. 2.)—*Remitter*, (C. 1.)

TITLE OF ENTRY.

Vide Diſcent, (D. 10.)

TOLL.

(A) The ſeveral Kinds of Toll.

Vide Prærogative, (D. 48.)

TOLL, *Tolnetum*, *Telonium*, or *Theolonium*, are all of the ſame Import, and ſignify a Sum of Money paid by the Buyer for Goods or Merchandizes exported or imported, or ſold within the Realm. 2 *Inſt.* 58.

As

As to Toll in a Market, Picage, and Stallage, *Vide in Market*, (F. 1, &c.)

So the King, or a Subject, Owner of a Port, may preſcribe for Toll for Merchandize there imported, without any Conſideration; for the Owner is indictable, if he does not repair the Port. *Semb. Lut.* 1523. *Semb.* 1 *Mod.* 104.

So for Toll for Murage; for it will be for the Benefit of the People that the Walls of a Town for Defence of the Country are repaired. *Cro. El.* 711.

(B) Toll-Turn.

SO Toll may be payable for Cattle or Goods in their Return from a Fair or Market. *Bl. Nom. Verb. Toll.* 1 *Sid.* 454. *Cro. El.* 711.

(C) Toll-thorough.

TOLL-thorough is a Sum demanded for a Paſſags through an Highway. *Bl. Nom. Verb. Toll.* 22 *Aſſ. pl.* 58.

Or for a Paſſage over a Ferry, Bridge, *&c.* *Bl. Nom. Verb. Toll.*

Or for Goods which paſs by ſuch a Port in the River. 1 *Mod.* 47. 1 *Sid.* 454.

And it may be demanded in Conſideration of the Repair of the Pavement in a High-Street. *Jon.* 162.

Or of the Repair of a Sea-Wall, Bridge, *&c.* *R. Jon.* 162.

Cleanſing of a River, *&c.* 1 *Mod.* 48.

But Toll-thorough cannot be claimed, ſimply, without any Conſideration. *R. Jon.* 162. *R. Mo.* 575. 1 *Mod.* 47. 2 *Mod.* 143. 4 *Mod.* 320. *D. Cont.* 1 *Mod.* 232. *R.* 1 *Sid.* 454. *Per Poph.* 2 *J. cont. Cro. El.* 711. 2 *Rol.* 522. *l.* 37.

As, if One demands 2*d.* for every Score of Sheep, that paſs by ſuch a Town; for this would be a Toll for Paſſage in an Highway. *R. Mo.* 575. *Cro. El.* 710.

So Toll for a Ship that comes to ſuch a Point cannot be demanded without a Conſideration; for the Sea is free for all. *R.* 1 *Mod.* 104.

For Cattle that paſs by ſuch a Bridge. *Semb.* 3 *Lev.* 400.

So, it cannot be claimed from thoſe, to whom the Conſideration does not extend: As, a Cuſtom, That upon Conſideration that the City of *N.* maintains a Key for all Goods imported upon the River to the City, they ought to take for every Ship upon the River, paſſing by the Key, ſo much, is not good for Ships which do not load or unload at the Key. *R.* 1 *Vent.* 71. 1 *Mod.* 71. *R.* 2 *Lev.* 96.

[So a Preſcription to take Toll for paſſing thro' the Streets of *G.* in conſideration of repairing divers Streets there, is bad; for that is no Conſideration for Toll in the other Streets which he does not repair. *Truman* v. *Walgham*, *P.* 6 *G.* 3. *Wilſ.* 296.]

So, it cannot be claimed as Appendant to a Manor, for it depends upon the Will of a Stranger, not of the Lord himſelf; and therefore muſt be claimed as an Eaſement. *Kel.* 152. *a.*

(D) Toll-traverſe.

TOLL-traverſe is a Sum demanded for Paſſage over the private Soil of another. *Bl. Nom. Verb. Toll.* 1 *Sid.* 454. *Cro. El.* 711. 22 *Aſſ. pl.* 58.

And this Toll may be demanded without alledging any Conſideration for it. *Mo.* 575. 2 *Mod.* 143.

As, if the Lord of a Manor has a Wharf near a navigable River, and demands 2*d. per Ton* for all Goods put upon the Land within his Wharf, tho' he does not ſay, upon the Wharf. *R.* 3 *Lev.* 425. 2 *Lev.* 97.

If

If the Lord claims 2*d.* for all Wares ſold within his Manor, without ſaying, in a Fair or Market. *Dub.* 4 *Mod.* 319.

(E) Who may demand Toll.

A Man may be intitled to have Toll by Preſcription, or Grant. 4 *Mod.* 319.

So, if the Soil, in which a Fair or Market is held by Preſcription, comes to the Crown, neither the Fair, *&c.* nor the Toll there due, are extinguiſhed. *Mo.* 474.

So, if a Manor to which Toll is Appurtenant comes to the King, the Toll continues Appurtenant. 1 *Mod.* 232. 2 *Mod.* 144.

So, if the King grants a Fair or Market, he may alſo grant to the Grantee to take a reaſonable Sum for Toll. *Mo.* 474.

And the Grant will be good; tho' the Charter does not expreſs the Sum in certain. *Per* 3 *J. Mont. cont. Pal.* 86.

So, if a Man builds a new Bridge, or a Wall againſt the Sea, *&c.* the King may grant to him to take Pontage, or Murage; for it is for the Eaſe of the People. *Mo.* 474.

But the King cannot grant a Toll for Goods not brought to Market. *Lut.* 1502.

[Toll-Bars cannot be erected out of the Place for which Toll is demanded. *Attorney-General* v. *Ayre*, *in Sc. M.* 1720. *Bunb.* 68.]

(F) When no Toll can be due.

BUT Toll cannot be claimed except by Grant or Preſcription.

So, tho' a Man may make an Agreement for Goods landed out of a Ship upon his Land; yet he cannot take 2*d.* for every Barrel, or other Sum certain for Goods landed there; for that would be to raiſe a Toll or Cuſtom without the Conſent of the King. *R.* 2 *Rol.* 171. *l.* 10.

(G) Who ſhall be quit of Toll.

(G. 1.) By Preſcription.

PERSONS may be quit of Toll by Preſcription, or the King's Grant: As, a City, or Borough, may preſcribe to be quit of Toll. *F. N. B.* 226. *I.*

The Inhabitants of a Borough may preſcribe for Paſſage in a Ferry without Toll. *Adm.* 1 *Sal.* 12. *R.* 3 *Mod.* 293.

So the King is quit of all Tolls by his Prerogative. *Pal.* 85.

So, by the Cuſtom of the Realm, Tenants in *Antient Demeſne* may claim to be quit of Toll in all Fairs and Markets within the Realm, for Goods bought or ſold for or out of their Tenements. *F. N. B.* 228. *A.* *Vide Antient Demeſne*, (F. 4.)

So by the Cuſtom of the Realm Eccleſiaſtical Perſons ought to be exempt from Pontage, Murage, *&c.* *Pal.* 85. *Vide Eccleſiaſtical Perſons*, (D.)

(G. 2.) By Grant.

So the King by his Charter may grant, That the Inhabitants of ſuch a Town, Borough, *&c.* ſhall be quit of Toll in every Place in *England*. *Lut.* 1332. *Vide Prærogative*, (D. 33.)

That ſuch an Abbot, Biſhop, *&c. et Homines ſui ſint quieti ab omni Theolonio in omni Foro, Nundinis, et Tranſitu, per totum Regnum.* 2 *Rol.* 202. *l.* 15.

But ſuch Grant, That he *et Homines ſui ſint* quit of Toll, *&c.* extends only to Toll for their own proper Neceſſaries, not if they buy or ſell as Common Merchants. 2 *Rol.* 202. *l.* 15.

(H) Remedy

(H) Remedy for Freedom from Toll.

(H 1.) By Writ *de essendi quiet' de Thelonio.*

IF a Manwho ought to be quit of Toll be charged, he may have a Writ *de essendi quiet de Thelonio. F. N. B.* 226. *I.*

(H. 2.) By Actions.

So, if a Man takes Toll, when it is not due, or more than his Due, or of him who is exempt, an Action upon the Case lies. *R.* 1 *Sal.* 12. *Vide Market*, (F. 1.)

Or Trespass. *Lut.* 1329. 1 *Sal.* 248.

So, if the Cattle or Goods of any exempt are distrained for Toll, he may have a *Replevin*.

Vide more concerning *Toll* in *Ancient Demesne*, (F. 4.)—*London*, 1.—*Market*, (F. 1.)

Toll-Booth.

Vide Market. (F. 1.)

TOLT.

Vide Droit, (B. 5.)

TOMBS.

Vide Cemetery. (C.)

TONNAGE AND POUNDAGE.

Vide Parliament (H. 12.)—(*Trade* C. 1, &c.)

TOUTS TEMPS PRIST.

Vide Pleader, (2 Y. 5.)

TOWÆR COURT.

Vide Courts (O. 8.)

TOWN.

Vide Pariſh (C. 1, 2.)—*Leet*, (O. 3.)

TOWN CLÆRK.

Vide Franchiſes, (F. 27.)

TRADE.

(A) Liberty of Trade.

(A 1.) By Merchants Strangers.

TRADE is beneficial to the Commonwealth. 11 *Co.* 86. *a.* 1 *Rol.* 4.

All Trades, Mechanical or others, which avoid Idleneſs, and exerciſe Men in Work for the Maintenance of them and their Families and the Increaſe of their Subſtance. 11 *Co.* 86.

By the *St. M. Ch.* 9 *H.* 3. 30. *Omnes Mercatores, niſi publice prohibiti, habeant ſalvum et ſecur' Conduct' exire de Angliâ, venire in Angliam, morari et ire per Angliam per Terram aut Aquam ad emendum, vel vendendum.* Confirmed by the *St.* 2 *Ed.* 3. 9.

The *Magna et Parva Cuſtuma*, and alſo Tonnage and Poundage, were granted for Safe-guard of the Sea. 2 *Rol.* 175. *l.* 10. *Vide in Parliament*,) H. 11, 12)

By the *St.* 18. *Ed.* 3. 3. The Sea ſhall be open to all Manner of Merchants to paſs where they pleaſe.

So by the *St. of the Staple* 27 *Ed.* 3. 2. All Merchants Strangers, not of Enmity may ſafely come and dwell in the Realm, where they will, and thence return with their Ships, Wares, *&c.* And freely ſell, *&c.* paying the Cuſtoms due. So by the 14 *Ed.* 3. *St.* 2. 2.

So by the *St.* 9 *Ed.* 3. 1. and 25 *Ed.* 3. 2. All Merchants, Strangers, and Denizens, or any other, may ſell Corn, *&c.* and every other Thing vendible to whom they pleaſe, Foreigners or Denizens, except the King's Enemies: And any Charter, Proclamation, Allowance, Judgment, *&c.* to the Contrary ſhall be void. Confirmed by the *St.* 11 *R.* 2. 7.

By the *St.* 2 *R.* 2. 1. All Merchants Aliens of Amity with the King may ſafely come within the Realm; and in all Cities, Boroughs, *&c.* abide with their Goods as long as they pleaſe without Diſturbance: and ſell and buy in Groſs and by Parcels to whom, and of whom they pleaſe. And return, *&c.* by the *St* 5 *R.* 2. 1.

But this was reſtrained by the *St.* 16 *R.* 2. 1. That Merchants Aliens ſhall not ſell by Retail, except Victuals.

(A. 2) Remedy upon Diſturbance.

By the *St.* 9 *Ed.* 3. 1. (Confirmed by the *St.* 2 *R.* 2. 1. 11 *R.* 2. 7.) He that gives Diſturbance to a Merchant contrary to this Statute ſhall yield to the Merchant double Damages: And, if attainted, ſhall have a Year's Impriſonment, and be ranſomed at the King's Will.

By *the ſame Stat.* If Diſturbance be to a Merchant, Stranger, or Denizen, in City, Borough, *&c.* which hath Franchiſe, and the Mayor, *&c.* on Requeſt give not Remedy, and be thereof attainted, the Franchiſe ſhall be ſeiſed into the King's Hands.

In a Town, which hath no Franchiſe, if the Lord, or his Bailiff, or Conſtable, *&c.* being required to do Right, do it not, they ſhall yield to the Plaintiff his double Damages.

So *by the ſame Stat.* The Chancellor, Treaſurer, and Juſtices, aſſigned to hold the King's Pleas, in the Places where they come, ſhall inquire of ſuch Diſturbances, and the ſame puniſh, *&c.*

Or the King by Commiſſion under the Great Seal may aſſign Perſons to inquire and puniſh the ſame: And this was alſo allowed by the *St.* 25 *Ed.* 3. 2.

And *by the ſame Stat.* 25 *Ed.* 3. 2. Every Perſon who will ſue (on ſuch Diſturbance) may have a Writ in the *Chancery* to attach the Diſturber, and cauſe him to anſwer in the King's Court.

And

And therefore, where a Merchant Stranger delivers his Goods to a Carrier to be carried to a Port, which are by him feloniouſly embezzled, he may ſue in *Chancery* for Relief, where there ſhall be ſpeedy Diſpatch, and need not proceed at the Common Law. 13 *Ed.* 4. 9. *b.*

So by the *St.* 27 *Ed.* 3. 2. If any by Colour of his Office, or otherwiſe, take any Thing of Merchants againſt their Agreement, he ſhall be arreſted by the Mayor and Bailiffs of the Place, if out of the *Staple*, or by the Mayor and Miniſters of the *Staple*, if in the *Staple*: And ſpeedy Proceſs ſhall be againſt him from Day to Day according to the Law of the *Staple*, and not at the Common Law.

So by the *St.* 27 *Ed.* 3. 20.

And therefore, he ſhall have Advantage of the *Law Merchant*, tho' it be not conformable to the Common Law. 13 *Ed.* 4. 9. *b.* 2 *Rol.* 114.

And ſhall have ſpeedy Remedy. 13 *Ed.* 4. 9. *b.* 2 *Rol.* 114.

(A 3) But an Alien ſhall not be a Merchant or Factor in the *Engliſh* Plantations in *Aſia*, *Africa*, or *America*.

But by the *St.* 12 *Car.* 2. 18. *S.* 2. No Alien, unleſs naturalized, or made Denizen, ſhall exerciſe the Trade of a Merchant or Factor in any of the Places there named, (*viz.* The Lands, Iſlands, Plantations belonging, or which may belong, to the King or his Succeſſors in *Aſia*, *Africa*, or *America*,) on Pain of Forfeit of all his Goods, or which are in his Poſſeſſion, *&c.*

(A. 4.) Importation reſtrained.

So by the *St.* 11 *Ed.* 3. 3. No Merchant ſhall import Cloths not made within the King's Dominions, on Pain of Forfeiture of the Cloths.

Nor by the *St.* 3 *Ed.* 4. 4. Woollen Caps, or Woollen Cloths, Cards for Wool.

Laces, Corſes, Ribbands, Fringes of Silk and Thread, Laces of Thread, Silk twined or embroidered, Laces of Gold, of Silk and Gold, Saddles, Stirrups, Harneſs to Saddles, Spurs, Boſſes of Bridles.

Andirons, Gridirons, Locks, Hammers, Pinſors, Girdles of Iron, Latten, Steel, Tin, or Alkmine, Fire-Tongs, Dripping-Pans.

Points, Purſes, Gloves, Girdles, Harneſs for Girdles, Hats, Bruſhes.

Dice, Tennis Balls, Cheſs-men, Playing Cards.

Any Thing wrought of tawed Leather, tawed Furs, Buſkins, Shoes, Galoches, or Corks.

Knives, Daggers, Wood-Knives, Bodkins, Sheers for Taylors, Sciſſars, Razors, Sheaths, Pins, Pattens, Pack-Needles, Forcers, Caſkets, Rings of Copper or Latten gilt, Chafing-Diſhes, Hanging Candleſticks, Chafing-Balls, Sacring-Bells, Curtain-Rings, Ladles, Scummers, Counterfeit Baſons, Ewers, Painted Ware, or White Wire Thread, to be ſold within this Realm, (unleſs wrought in *Ireland*) on Pain to forfeit the ſame; a Moiety to the King, and a Moiety to him, who ſhall ſeize them.

So by the *St.* 1 *R.* 3. 12. No Merchant Stranger ſhall import to be ſold any Girdles, Harneſs for Girdles, Points, Leather, Laces, Purſes, Pouches, Pins, Gloves, Spurs, Sheers, Shoebuckles, Bells, (except Hawks-Bells) Curtain Rings.

Knives, Hangers, Taylors Sheers, Sciſſors, Andirons, Cobbards, Tongs, Fire-Forks, Gridirons, Stock-Locks, Keys, Hingers, Garnets, Painted Glaſſes, Painted Papers, Painted Forcers, Painted Images, Painted Cloths, beaten Gold or Silver for Painters, Saddles, Saddle-Trees, Horſe-Harneſs, Boots, Bits, Stirrups, Buckles, Chains, Latten Nails with Iron Shanks, Turnets, Standing Candleſticks, Hanging Candleſticks, Holy-water-Stops, Chafing-Diſhes, Hanging Lavers, Tin, or Leaden Spoons, Latten or Iron Wire, Iron Candleſticks, Grates, Horn for Lanthorns, on Pain of Forfeiture, a Moiety, *&c. ut ſupra.*

So by the *St.* 19 *H.* 7. 21. None ſhall import Silk wrought by itſelf, or with Stuff, in Ribbands, Laces, Girdles, Corſes, Cauls, or Points.

Nor by the *St.* 25 *H.* 8. 9. and 33 *H.* 8. 4. Any Thing made of Tin, or Pewter.

Nor

Nor by 5 *Eliz.* 7. Rapiers, Daggers, Knives, Hilts, Pummels, Lockets, Chapes, Handles, Scabbards, or Sheaths for Knives, *&c.*

(A. 5.) By the King's Subject.

(A. 5.) In foreign Countries.

By the *St.* 15 *Ed.* 3. 3. The Seas ſhall be open to all Merchants to paſs with their Merchandize, where they pleaſe.

So by the *St.* 3 *Jac.* 6. All Subjects of *England* may trade to and from *Spain*, *Portugal*, and *France*, paying their Cuſtoms and Duties, notwithſtanding any Incorporation made by the King to any to have a ſole Trade there.

[By *ſtat.* 23 *G.* 2. *c.* 13. Any Perſon ſoliciting, *&c.* any Artificer in any Manufacture of *Great-Britain* or *Ireland* to go abroad, forfeits 500 *l.* and Impriſonment for one Year; ſecond Offence 1000 *l.* and two Years Impriſonment.]

[Perſon exporting Tools in the Silk and Woollen Manufacture, forfeits the Tools and 200 *l.* Captain taking on Board 100 *l.* Captain of King's Ship 100 *l.* and caſhiered; Cuſtom-houſe Officer ſigning Cocket 100 *l.* and forfeits his Place.]

(A. 6.) Within the Kingdom. When they ſhall uſe a Trade by the Common Law.

So by the Common Law every Subject may exerciſe himſelf in every lawful Trade. 11 *Co.* 53. *b.* *Hob.* 211.

So he may uſe ſeveral Trades or Myſteries, if he pleaſes. 11 *Co.* 54. *a.* *Hob.* 211. *Cont.* 2 *Rol.* 392. *Pal.* 396.

And the *ſt.* 37 *Ed.* 3. 6. which required that every Man held himſelf to one Myſtery, was preſently repealed. 11 *Co.* 54. *a.*

So he might uſe a Trade, wherein he had Knowledge, tho' he never was Apprentice, or inſtructed in it. 1 *Sand.* 312.

(A. 7.) When not.

But by the Common Law a Man cannot uſe a Trade in which he is inſufficient 2 *Rol.* 392. *Pal.* 397.

And for a Misfeaſance to the Prejudice of any, an Action upon the Caſe lies againſt him. 1 *Sand.* 312.

So a Man, who profeſſes one Trade, cannot uſe a Thing proper to another Tade, tho' it be in Reference to the Commodities uſed in the Trade, which he profeſſes: As, a Bricklayer cannot do a Thing proper to the Trade of a Plaiſterer, where they are diſtinct Trades. *R.* 2 *Rol.* 391. But it was contrary to a By-Law. *Pal.* 396.

So a Wheel-wright cannot uſe the Trade of a Smith for making his Wheels. *Per Holt*, *Sho.* 267.

(B) Regulation of Trade by the King's Charter.

THE King by his Charter may conſtitute Fraternities, or Companies, for the Management of Foreign or Domeſtick Trade.

For Trade cannot be maintained or increaſed without Order and Government; And therefore, the King may erect *Gildam Mercatoriam*, a Fraternity or Incorporation of Merchants, for the Advancement of Trade. 8 *Co.* 125. *a.*

And none but the King can erect a Society for Trade. *Skin.* 224.

So the King by his Grant may require, That all Ships, which come to ſuch an Haven, unload in ſuch a Place, for the Security of the Cuſtoms. *Hard.* 55.

That Ships ſhall unload in a Publick Place, and not elſewhere. 1 *Rol.* 5.

That Tonnage be paid at ſuch a Port, more convenient for the King's Officers, and not prejudicial to the Subject. *Per Dod.* 1 *Rol.* 5.

So a Grant by the King to the Corporation of *Weavers* in *London*, rendring a Rent, That none ſhall intermeddle with their Trade, unleſs he be free of their Fraternity, is good. *Hard.* 55. *Vide Poſt*, (D. 1.)

So a Grant to *London*, that every one, who brings ſaleable Goods there, ſhall pay ſuch a Toll, will be good. *Hard.* 55.

So

So the King by his Patent may grant, That ſuch Perſons ſhall have the Sole Printing of Books of the Common Law. 2 *Ca. Ch.* 67. *Acc in Domo Proc.* 1 *Ver.* 120. *Skin.* 234. *R. Cart.* 90.

Or the Sole Printing of Almanacks. *Semb.* 2 *Ca Ch.* 66. *Skin.* 234.

Or the Printing of the Statute Books; for they are Matters of State. 2 *Ca. Ch.* 76, 93. 1 *Ver.* 120, 275.

Or *Engliſh* Bibles. 2 *Ca. Ch.* 93. 1 *Ver.* 120.

So, by Patent, the *Stationers* have the Sole Printing of Bibles, Teſtaments, Common-Prayer-Books. *Cart.* 90.

So for Civil-Law-Books, School-Books, Almanacks. *Cart.* 90.

But a Patent, granted to *Moor by King James* for the Sole Printing of Books of the Common Law, does not extend to new Books of the Law never printed before the Patent. *R. per* 10 *J.* 1668. 2 *Ca. Ch.* 67.

So, if the King grants Power to the *Stationers* for Printing ſuch Books, he cannot afterwards grant to the *Univerſity* to print the ſame Books. *Dub. Skin.* 234.

Vide Poſt, (D. 1, 4.)

[The *ſtat.* 12 *G.* 2. *c.* 21. regulates the Importation of Wool, *&c.* from *Ireland*, and directs the Manner of Proceeding againſt exporting Wool.]

[By 12 *G.* 2. *c.* 25. *ſſ.* 1. Leather curried or uncurried may be cut and ſold in ſmall Pieces; but this does not impower unqualified Perſons to act as Shoemakers, or to ſell in Towns againſt Law.]

[And by *ſſ.* 4. Curriers muſt curry Leather ſent to them within ſixteen Days, between *Michaelmas* and *Lady-day*, and within eight Days the Reſt of the Year; on Pain of 5 *l.* to be levied before one Juſtice, but ſubject to Appeal, but no *Certiorari*.]

[By 12 *G.* 2. *c.* 26. *ſſ.* 1. All Gold Plate is to be twenty-two Carats fine, and all Silver Plate eleven Ounces two Pennyweights fine, (but by *ſſ.* 2. it does not extend to Jewellers Work, except Mourning Rings;) on Penalty of 10 *l.* or Impriſonment for ſix Months.]

[And by *ſſ.* 5. No Plate to be ſold before marked with the Worker's Mark, and the Company's Mark, on Penalty of 10 *l.* or ſix Month's Impriſonment.]

[Forging Stamps is Felony without Clergy, by 31 *G.* 2. *c.* 32.]

[By 12 *G.* 2. *c.* 30. Sugars may be carried in *Britiſh*-built Ships from the *Sugar Colonies* to foreign Parts directly, under certain Regulations; and by 15 *G.* 2. *c.* 33. *ſſ.* 5. extended to all Ships belonging to Subjects reſiding in *Great Britain*; and continued to 1771.]

[By 12 *G.* 2. *c.* 36. Books firſt written and printed in this Kingdom, and reprinted abroad, ſhall not be imported on Pain of forfeiting 5 *l.* the Books, and double Value; except Books that have not been printed or reprinted here within twenty Years.]

[By *ſtat.* 14 *G.* 2. *c.* 37. Unwarrantable Schemes for erecting publick Stocks and Banks are prohibited in *America*.]

[By *ſtat.* 15 *G.* 2. *c.* 20. The making of Gold and Silver Lace and Thread is regulated.]

[By *ſtat.* 15 *G.* 2. *c.* 31. Various Regulations are made concerning the Plantation Trade, and for Claimers of Veſſels ſeized to give Security for Coſts, and allowing *Eaſt-India* Goods to be taken out of Warehouſes to be refreſhed.]

[By *ſtat.* 17 *G.* 2. *c.* 30. Perſons fixing *Scotch* or *Iriſh* Stamps to foreign Linens, or counterfeit Stamps to *Britiſh* Linens, forfeit 5 *l.* ſelling ſuch knowingly, the Linen, and 5 *l.* each Piece, on Conviction before one Juſtice.]

[By *ſtat.* 17 *G.* 2. *c.* 31. Regulations are made concerning Glaſs Beads, Borax, Camphire and Linens.]

[By *ſtat.* 18 *G.* 2. *c.* 24. *Britiſh* and *Iriſh* Linens are to be ſtampt, to intitle them to the Bounty; uſing falſe Stamps, 5 *l.* for each Piece; ſtamping foreign Linen as *Britiſh*, Pillory; and alſo 50 *l.* Fine, or twelve Month's Impriſonment; exporting foreign Linen as *Britiſh*, Forfeiture, and 5 *l.* each Piece.]

[By *ſtat.* 18 *G.* 2. *c.* 25. An additional Bounty of an Halfpenny *per* Yard on *Britiſh* and *Iriſh* Linen, from 5*d.* to 12*d. per* Yard, and of one Penny Halfpenny, from 12 *d.* to 18 *d. per* Yard, exported from 1745 to 1750.]

[By *ſtat.* 18 *G.* 2. *c.* 26. The Inland Duty of four Shillings *per* Pound on Teas is taken off, and an Inland Duty of one Shilling *per* Pound, and 25 *per Cent.* of the Value at the Company's Sale impoſed.]

[By *ſtat.* 23 *G.* 2. *c.* 29. The Duty on Pig-Iron from *America* is taken off, and Bar-Iron from thence may be imported free to *London.*]

[No ſlitting or rolling Mill, or plating Forge, with a Tilt Hammer or Furnace for making Steel ſhall be erected in *America*, on Pain of 200 *l.*]

[*Stat.* 23 *G.* 2. *c.* 31. regulates the Trade to *Africa* under a new Company.]

[*Stat.* 25 *G.* 2. *c.* 40. diveſts old *African* Company of their Forts, *&c.* and veſts them in the new.]

[By *ſtat.* 23 *G.* 2. *c.* 34. *Perſia* raw Silk, purchaſed in *Ruſſia*, may be imported from *Ruſſia* to this Kingdom.]

[By *ſtat.* 24 *G.* 2. *c.* 41. Many Regulations are made concerning Tobacco.]

[*Stat.* 26 *G.* 2. *c.* 13. contains further Regulations concerning Tobacco.]

[By *ſtat.* 25 *G.* 2. *c.* 14. The Port of *Lancaſter* is opened for Importation of Wool from *Ireland.*]

[And by the 25 *G.* 2. *c.* 19. The Port of *Great Yarmouth*]

[And by 26 *G.* 2. *c.* 8. The Port of *Exeter.*]

[And by *ſtat.* 26 *G.* 2. *c.* 11. Wool may be exported from any Port in *Ireland* to any Port in *Great Britain.*]

[By *ſtat.* 25 *G.* 2. *c.* 32. Gum *Senegal* may be imported from any Part of *Europe*, paying 10 *s. per Cwt.*]

[By *ſtat.* 26 *G.* 2. *c.* 12. Wines imported into the Out-ports ſhall not be brought to *London*, or within twenty Miles, without paying *London* Duty.]

By *ſtat.* 26 *G.* 2. *c.* 18. Any Perſon, on paying 20*l.* may be free of the *Turkey* Company.]

[*Stat.* 26 *G.* 2. *c.* 21. regulates the Importation of Velvets, *&c.*]

Stat. 28 *G.* 2. *c.* 14. contains further Regulations of the *Britiſh* Herring-Fiſhery. So 30 *G.* 2. *c.* 30.]

[By *ſtat.* 29 *G.* 2. *c.* 16. The King is impowered to prohibit the Exportation of Saltpetre, Gunpowder, Arms, *&c.*]

[*Stat.* 29 *G.* 2. *c.* 23. regulates the *Scotch Fiſhery.*]

[By *ſtat.* 29 *G.* 2. *c.* 33. Maſters in the Woollen Manufactory, paying their Workmen in other Manner than in Money, forfeit 20*l.*]

[*Stat.* 31 *G.* 2. *c.* 40. regulates the Sale of Hay and Straw, and Cattle, in and about *London.*]

[*Stat.* 32 *G.* 2. *c.* 32. is for preventing fraudulent Importation of Cambricks and *French* Lawns, enforced by 7 *G.* 3. *c.* 43.]

[*Stat.* 32 *G.* 2. *c.* 34. prohibits the Importation of *French* Woollens into the *Levant*, on *Engliſh* Account, and reſtrains the illegal Importation of Raw Silk and Mohair.]

[*Stat.* 4 *G.* 3. *c.* 37. regulates *Engliſh* Cambrick Manufactory.]

[By *Stat.* 5 *G.* 3. *c.* 29. Raw Silk ſhall not be exported from *Ireland*, on Pain of Forfeiture thereof, and of the Ship, and Impriſonment of the Maſter and Crew for three Months.]

[*Stat.* 5 *Geo.* 3. *c.* 30. regulates ſending *Eaſt India* Goods to *Africa*, and the Trade in Bugles in *Britain.*]

[*Stat.* 5 *Geo.* 3. *c.* 43. contains various Regulations on the Cuſtoms, Exciſe, Inland and Salt Duties; explained by 6 *G.* 3. *c.* 13.]

[*Stat.* 5 *G.* 3. *c.* 43. veſts all the Forts in *Africa*, between *Sallee* and *Cape Rouge*, in the King, and regulates the *African* Trade.]

[*Stat.* 5 *Geo.* 3. *c.* 51. regulates the Woollen Manufactory in *Yorkſhire.* This is amended by 6 *G.* 3. *c.* 23.]

[*Stat.* 6 *G.* 3. *c.* 29. regulates the marking of Frame-work knitted Pieces and Stockings.]

[*Stat.*

[*Stat.* 6 *Geo.* 3. *c.* 50. regulates Commerce between *Southampton* and *Portſmouth*, and *Gowes* in the Iſle of *Wight*.]

[By *ſtat.* 9 *Geo.* 3. *c.* 35. Iron, Maſts, *&c.* Pitch, *&c.* Hemp, *&c.* ſhall not be exported till offered to and refuſed by the Commiſſioners of the Navy.]

[*Stat.* 10 *Geo.* 3. *c.* 49. regulates the making of Bricks, and exempts Bricks eight Inches and an Half long, four broad, and two Inches thick, in *London*, from Penalties.]

[*Stat.* 12 *Geo.* 3. *c.* 46. is for preventing Frauds in the Exciſe on Tea, Soap, low Wines and Spirits.]

[By *ſtat.* 12 *G.* 3. *c.* 61. The Making, Keeping, and Carriage of Gunpowder is regulated; no new Mills to be ſet up without Licence, no Peſtle-Mills to be uſed, not more than 40 *lb.* to be made at a Time under a Pair of Stones, not more than 40 *cwt.* to be dried at a Time, only neceſſary Quantity to be kept in the Drying-Houſe; Magazines to be remote from Mills; no Charcoal to be kept near Mills; Dealer not to keep more than 200 *lb.* and others 50 *lb.* in one Place, but 300 *lb.* may be kept for the uſe of Mines within 200 Yards of them; Quarter-Seſſions to appoint Ground for Magazines; not more than 25 Barrels to be carried at once by Land, and 200 by Water; Ships above *Blackwall* to have only 25 *lb.* on Board.]

[*Stat.* 13 *G.* 3. *c.* 38. eſtabliſhes the Plate-Glaſs Company for twenty-one Years.]

[By *Stat.* 13 *G.* 3. *c.* 43. When middling *Britiſh* Corn, at the Ports where Corn is imported, ſhall be above the following Prices, *viz.* Wheat 48 *s.* Rye, Peaſe, Beans, 32 *s.* Barley 24 *s.* Oats 16 *s.* *per* Quarter, all former Duties on Importation ſhall ceaſe, and only the following be paid; Wheat 6 *d.* Rye, Peaſe, Beans 3 *d.* Barley and Oats 2 *d.* *per* Quarter; and 2 *d.* *per cwt.* on Wheat-Flour.]

[Corn ſhall not be exported when at the following Prices; Wheat 44 *s.* Rye, Peaſe, Beans 28 *s.* Barley 22 *s.* Oats 14 *s.* *per* Quarter.]

But there may be exported to *Gibraltar* 2500 Quarters, to *Minorca* 3500 Quarters, to *Saint Helena* 500 Quarters, to *Guernſey* and *Jerſey* 5000 Quarters, to Iſle of *Man* 2500 Quarters.]

[Beans, 200 Quarters of Wheat-Flour, and 15 Ton of Bread, may be exported to *Africa*]

[Corn may be ſent to *Ireland*, whilſt the Exportation is prohibited there.]

[By *Stat.* 14 *G.* 3. *c.* 5. 2000 Quarters of Wheat from *London*, and all other Corn from that and other Ports, may be exported to the Sugar Colonies. *Alderney* added to *Guernſey* and *Jerſey*, and Bread may be ſent. The Wheat, *&c.* neceſſary for the Fiſhery may be ſent from *Guernſey*, *&c.*]

[By *ſtat.* 14 *G.* 3. *c.* 64. The Prices of Corn to be exported, to be regulated by the Average-Price at the neareſt Market, on the laſt Market-Day before the Shipping.]

[*Vide* C. 4.]

[By *ſtat.* 13 *G.* 3. *c.* 72. Cod, *&c.* may be imported from *Gulph of Saint Lawrence*, and Coaſt of *Labrador*, as from *Newfoundland*.]

[By *ſtat.* 14 *G.* 3. *c.* 68. Exciſe-Officer ſhall weigh Hop-Bags before the Hops are put in, and mark them with the Weight, Planter's Name and Place of Abode, and Date of the Year; neglecting, forfeits 40 *s.*; counterfeiting Mark, 20 *l.* Penalties recoverable before one Juſtice, by Diſtreſs.]

[By *ſtat.* 14 *G.* 3. *c.* 71. Perſon loading Utenſils, uſed in Cotton or Linen Manufactory, on Veſſel not bound directly to *Britain* or *Ireland*, forfeits the Goods, and 200 *l.* Officers may ſeiſe; Goods ſhall be ſold; half to the King, half to Officer. Captain of Ship forfeits 200 *l.*; if in King's Service, incapacitated alſo.]

[Perſon collecting ſuch Utenſils, or in Woollen or Silken Manufactures, with Intent to export, one Juſtice may ſeiſe them and the Perſon, and bind over, or commit to the next Aſſizes or Quarter-Seſſions; and if found Guilty, forfeits Goods and 200 *l.* Forfeitures, Half to the King, Half to Proſecutor.]

[By

[By *ſtat.* 14 *G.* 3. *c.* 72. Stuffs of Cotton only, ſpun in *Britain*, and printed or dyed, may be uſed; Importer of Foreign, marked as *Britiſh*, forfeits 10*l.*]

[*St.* 14 *G.* 3. *c.* 73. regulates the Diſtillery, and Allowances on Woollen and Linen Manufactories for Soap.]

[By *ſtat.* 15 *G.* 3. *c.* 1. When Barley may be imported on Duty of 2*d.* *per* Quarter, Indian Corn or Maize may be imported on Duty of 1*d.* *per* Quarter.]

[By *ſtat.* 15 *G.* 3. *c.* 5. Wool Cards and Spinners Cards may be exported to *America*.]

[By *ſtat.* 15 *G.* 3. *c.* 10. *c.* 18. Trade from *New England*, *&c.* is reſtrained.]

[By *ſtat.* 15 *G.* 3. *c.* 14. Penalties by 14 *G.* 3. for reeling ſhort Yarn are to be levied by Diſtreſs, for Want of it Offenders to be committed for a Month by one Juſtice, they may appeal to Quarter Seſſions whoſe Determination is final.]

[By *ſtat.* 15 *G.* 3. *c.* 27. Waggons, *&c.* for loading Coals on Shipboard are to be meaſured at all Ports as they are at *Newcaſtle* and *Sunderland*.]

[*Stat.* 15 *G.* 3. *c.* 31. is for Encouragement of the Fiſhery by Bounties, Protections, *&c.*]

[*Stat.* 15 *G.* 3. *c.* 34. is for encouraging the Manufactures of Rape and other Vegetable Oils.]

[*Stat.* 15 *G.* 3. *c.* 37. permits the Importation of painted Earthen Ware (except Gally Tiles) on 10*l.* 10*s.* *per* Hundred, *ad valorem*.]

[*Stat.* 16 *G.* 3. *c.* 5. prohibits Trade with the Colonies in *North America* in Rebellion, repeals 14 *G.* 3. *c.* and 15 *G.* 3. *c.* 10 & 18.]

[*Stat.* 16 *G.* 3. *c.* 47. grants Bounties on Whale Fiſhery for eleven Years.]

[*Stat.* 16 *G.* 3. *c.* 48. regulates Bugles and Feathers.]

[*Stat.* 17 *G.* 3. *c.* 11. empowers the Manufacturers in Wool in *Yorkſhire*, *Lancaſhire*, and *Cheſhire* to aſſemble and act jointly to prevent Frauds and Abuſes in the Trade.]

[*Stat.* 17 *G.* 3. *c.* 29. prohibits manufacturing Sloe Leaves, *&c.* in Imitation of Tea, 5*l.* *per* Pound Penalty.]

[*Stat.* 17 *G.* 3. *c.* 41. prohibits clandeſtine unſhipping Goods from *India* Ships, directs how Bonds for exporting ſhall be diſcharged, and that *Baltick* Traders give Manifeſto of their Cargoes to the Conſul.]

[*Stat.* 17 *G.* 3. *c.* 42. regulates Bricks and Tiles. Bricks eight and half Inches long, two and half thick, four broad. Pan-tiles thirteen and half long nine and a half wide, half thick.]

[*Stat.* 17 *G.* 3. *c.* 55. regulates Hatters.]

[*Stat.* 17 *G.* 3. *c.* 56. amends Laws to prevent Frauds and Abuſes in many Manufactures.]

[*Stat.* 18 *G.* 3. *c.* 16 permits the Exportation of certain Quantities of Wheat Flour, *&c.* to *Newfoundland*.]

[*Stat.* 18 *G.* 3. *c.* 24. allows Re-importation of unmanufactored Tobacco tho' ſold abroad; and Importation of Tobacco the Product of *Dominica*.]

[By *ſtat.* 18 *G* 3. *c.* 55. All Goods, *&c.* (except Woollens, Cottons, Hats, Glaſs, Hops, Gunpowder, and Coals) may be exported from *Ireland* to *Britiſh* Plantations in *America*, *Weſt-Indies* or *Africa*.]

[By *Stat.* 18 *G.* 3. *c.* 56. Cotton Yarn may be imported from *Ireland* to this Kingdom Duty free.]

(C) Charge upon Trade.

(C. 1.) Cuſtoms of Tonage and Poundage, *&c.*

SO Merchandizes may be charged with Cuſtoms or Duties to the King.

By the *St.* 14 *Ed.* 3. *Seſſ.* 2. 2. Merchants ſhall be free to Trade paying their Cuſtoms due.

The old and new Cuſtoms originally commenced by Parliament. *Vide Parliament*, (H. 11.)

No Cuſtoms are due but by Common Conſent of Parliament. *Vide Parliament*, (H. 9, &c.)—*Prerogative*, (D. 43.)

By the *St.* 12 *Car.* 2. 4. The Parliament grant to the King on every Ton of Wine from *France* brought into the Port of *London* by Way of Merchandize, by a Subject born 4*l.* 10*s.* by an Alien 6*l.* into any other Port by a Subject, 3*l.* by an Alien, 4*l.* 10*s.*

On every Butt or Pipe of ſweet Wines brought into the Port of *London*, by a Subject, 2*l.* 5*s.* by an Alien, 3*l.* Into another Port by a Subject, 1*l.* 10*s.* by a Stranger, 2*l.* 5*s.*

On every Aum of *Rheniſh* or *German* Wine by a Subject into any Port, 1*l.* by a Stranger, 1*l.* 5*s.*

By the *St.* 1 *Ann.* 13. *S.* 112. *Hungary* Wines imported by *Hamburgh* ſhall pay as *German* Wines.

By the *St.* 12 *Car.* 2. 4. On all Goods carried out of the King's Dominions, or brought into the ſame by Way of Merchandize, by Subject, Denizen, or Alien, Poundage of 12*d.* for every 20*s.* Value, according to the Valuation in the Book of Rates: And 12*d.* more *per* Pound by a Merchant Stranger for Native Commodities exported, except ſuch as in the ſame Book are Cuſtom-free.

And by the ſame *St. S.* 3. If any Goods be ſhipped or put into a Boat or Veſſel to the Intent to be carried beyond Sea, or be brought from beyond Sea into any Port, *&c.* by Way of Merchandize and unſhipped, *&c.* the Cuſtoms due not paid or tendred to the Collector or his Deputy, with Conſent of the Comptroller or Surveyor there, or one of them, nor agreed for at the Cuſtom-houſe, ſhall be forfeited; a Moiety to the King, a Moiety to him who ſhall ſeize or ſue for the ſame.

[Raiſins imported from Ports within the Juriſdiction of *Malaga*, by Name of *Lexia* Raiſins, pay Duty as Great Raiſins by old Book of Rates which is not altered by additional Book of Rates. *Attorney-general* v. *Chitty*, *P.* 17 *G.* 2. *Parker* 37.]

[By 12 *G.* 2. *c.* 21. The Duties on Woollen and Bay-Yarn imported from *Ireland* to *England*, are taken off, except as to Yarn twiſted or thrown, or Cruel.]

[By *ſtat.* 16 *G.* 2. *c.* 8. The Gin-Act, 9 *G.* 2. *c.* 23. is repealed, and new Duties granted.]

[By *ſtat.* 18 *G.* 2. *c.* 9. Additional Duties are granted on Wines and Vinegar, 8*l.* *per* Tun on *French*, and 4*l.* on all others.]

[By *ſtat.* 19 *G.* 2. *c.* 12. Additional Duties on Glaſs imported; 8*d.* *per lb.* on Crown, Plate and Flint, 2*d.* on Green, and 2*s.* on Bottles, for every Dozen Quarts: And for Home-made Glaſs, 9*s.* 4*d.* *per Cwt.* of the Materials uſed in White Glaſs, and 2*s.* 4*d.* Green Glaſs.]

[By the ſame, additional Duty on *Britiſh* Spirits:

	d.	
Low Wines from Foreign Materials,	3	*per* Gallon.
——— from Waſh made of Corn, or from Brewers' Waſh, ——	0½	*per* Gallon.
——— from other Home Materials, ——	0¾	*per* Gallon.
Strong Waters from Wine or Cyder imported,	3	*per* Gallon.]
——— from other Materials, for Sale,	1½	*per* Gallon.]

[By *ſtat.* 21 *G.* 2. *c.* 2. An additional Duty of 12*d.* in the Pound on all Merchandize imported, and unrated *Eaſt-India*, 5 *per Cent.* on the groſs Price.]

[By *ſtat.* 24 *G.* 2. *c.* 40. additional Duty on Spirits:

	d.	
Low Wines from Corn, ——	1½	*per* Gallon.]
Strong Waters from Ditto, for Sale, —	4½	*per* Gallon.]
Low Wines from other *Britiſh* Materials,	1¾	*per* Gallon.]
Strong Waters from Ditto, for Sale, —	3½	*per* Gallon.]

[By *ſtat.* 33 *G.* 2. *c.* 9. additional Duties on Spirits:

	£.	*d.*	
Low Wines from Malt,	0	5	*per* Gallon.
Spirits from Ditto,	1	3	
Low Wines from foreign Materials,	1	3	
Spirits from Ditto,	0	8	
Low Wines from *Britiſh* Materials, other than Malt,	0	6¼	
Spirits from Ditto,	1	1¼	
Foreign ſingle Brandy,	1	0	
double Brandy,	2	0	

[By *ſtat.* 2 *G.* 3. *c.* 5. additional Duties on Spirits:

	£.	*d.*	
Low Wines from Malt,	0	1	*per* Gallon.
Spirits from Ditto,	0	3	
Low Wines from foreign Materials,	0	3	
Spirits from Ditto,	0	2	
Low Wines from *Britiſh* Materials, except Malt,	0	1¼	
Spirits from Ditto,	0	2	
Foreign ſingle Brandy,	0	6	
double Brandy,	1	0	

[By *ſtat* 6 *G.* 3. *c.* 47. additional Duties on Foreign Spirits, not from Plantations; ſingle Brandy 6*d.* double Brandy 1*s.* *per* Gallon.]

[By *ſtat.* 24 *G.* 2. *c.* 46. Duty on Foreign Linen Yarn; Raw 1*d.* *per* Pound, bleached 3*d.* *per* Pound.]

[By *ſtat.* 29 *G.* 2. *c.* 13. additional Duty on Cards 6*d.* on Dice 5*s.*]

[By *ſtat.* 29 *G.* 2. *c.* 14. Duty on Plate, from 5*s.* for 100 *oz.* to 10*l.* for 4000 *oz.*]

[By *ſtat.* 30 *G.* 2. *c.* 19. additional Stamp Duties.]

[By *ſtat.* 31 *G.* 2. *c.* 15. Culm may be exported to *Portugal* for 2*s.* *per* Chaldron Duty.]

[By *ſtat.* 31 *G.* 2. *c.* 22. one Shilling in the Pound is granted on Offices and Penſions; and 32 *G.* 2. *c.* 33. explains it.]

[By *ſtat.* 31 *G.* 2. *c.* 32. Duty of 40*s.* on every Licence to ſell Plate. Sellers of ſmall Wares under two Pennyweights Gold, or five Pennyweights Silver, need not have Licence by *ſtat.* 32 *G.* 2, *c.* 24. but Sellers of Gold weighing two Ounces, or Silver thirty Ounces in one Piece, and Pawnbrokers and Refiners, to have 5*l.* Licence.]

[By *ſtat.* 32 *G.* 2. *c.* 10. additional Subſidy of 12*d.* in the Pound is laid on Tobacco; foreign Linen; Sugar; Grocery, except Currants; *Eaſt India* Goods, except Coffee and raw Silk; foreign Spirits, except Rum from *Britiſh* Sugar Plantations; and Paper imported.]

[And additional Inland Duty of 12*d.* *per* Pound on Coffee, and 9*d.* *per* Pound on Chocolate.]

[By *ſtat.* 32 *G.* 2. *c.* 35. various Stamp-Duties are impoſed.]

[By *ſtat.* 1 *G.* 3. *c.* 7. additional Duty of 3*s.* *per* Barrel on ſtrong Beer.]

[By *ſtat.* 3 *G.* 3. *c.* 12. additional Duties on Wines; on *French* Wines 8*l.* on all other 4*l.* and on Cyder and Perry imported 2*l.* *per* Tun.]

[By *ſtat.* 4 *G.* 3. *c.* 15. ſeveral Duties are impoſed on Goods imported into *America*.]

[By *ſtat.* 5 *G.* 3. *c.* 29. the former Duties on raw Silk imported are repealed, and 1*s.* 3*d.* for every Pound of 24 Ounces granted; and on thrown Silk, for every Pound of 16 Ounces, 6*d.* above all former Duties.]

[By *ſtat.* 5 *G.* 3. *c.* 35. additional Duties are granted on Coals exported, (except to *Ireland*, *Man*, and Plantations) 4*s.* *per* Chaldron.]

[On wrought Silks from *Perſia*, *China* and *India*, and printed Callicoes exported, 1*s.* *per* Pound.]

[On

[On Policies of Aſſurance in *London* and Bills of Mortality, 2*d*.; elſewhere, 2*s*. 6*d*.]

[The Duties of 6*d*. by 12 *Ann*. and 1*s*. by 30 *G*. 2. on Deeds, declared to extend to Policies and Charter-Parties.]

[By *ſtat*. 5 *G*. 3. *c*. 37. additional Duties on Gum *Senegal* and Gum *Arabic* imported, 6*d*. *per Cwt*. exported, 1*l*. 10*s*.; reduced to 5*s*. by 14 *Geo*. 3. *c*. 10.]

[*Stat*. 5 *G*. 3. *c*. 46. repeals former Stamp-Duties on Admiſſions to Corporations, and grants 2*s*. for every Admiſſion; and contains many Regulations of the Stamp-Duties. Amended by 7 *G*. 3. *c*. 44.]

[By *ſtat*. 6 *G*. 3. *c*. 14. additional Duties on Cyder and Perry:

Imported, 4*l*. *per* Tun.
Britiſh retailed, 6*s*. *per* Hhd.
—— ſent to an Agent, 16*s*. 8*d*. *per* Hhd.
—— ſold by Maker, 6*s*. *per* Hhd.
In no Caſe chargeable with more than 16*s*. 8*d*. *per* Hhd.]

[By *ſtat*. 6 *G*. 3. *c*. 46. additional Duty of 17*s*. 6*d*. *per* Pound of *Italian* Silk, Crapes and Tiffanies imported.]

[By *ſtat*. 7 *G*. 3. *c*. 28. additional Duty on Linen imported:

	d.	
Above Yard-wide (except *Flanders* Holland)	3	} *per* Ell.]
Drilling,	3	

[By *ſtat*. 7 *G*. 3. *c*. 58. additional Duties on Linens imported:

	d	
Packing Canvas,	0½	} *per* Ell.]
Dutch Barras,	0½	

[Holland whited Lawn, 1*d*. *per* Yard.]

[By *ſtat*. 8 *G*. 3. *c*. 25. foul Salt, to be uſed for Manure only, is charged with only 4*d*. *per* Buſhel.]

[*Stat*. 10 *G*. 3. *c*. 43. grants Duties on Straw, &*c*. Hats.]

[*Stat*. 13 *G*. 3. *c*. 67. grants one Penny Halfpenny *per* Yard additional on all painted Paper imported.]

[By *ſtat*. 14 *G*. 3. *c*. 72. three Pence *per* Yard ſquare is laid on all printed Cottons ſpun in *Britain*.]

[By *ſtat*. 14 *G*. 3. *c*. 74. Duties to be paid on great Raiſins, at the Rate of 10*s*. *per Cwt*. (inſtead of 1*l*. 10*s*. as before.)]

[*Stat*. 17 *G*. 3. *c*. 39. grants Duties on Glaſs and Servants.]

[*Stat*. 17 *G*. 3. *c*. 50. grants Duties on Auctions.]

[*Stat*. 18 *G*. 3. *c*. 27. grants 8*l*. 8*s*. *per* Ton on *French* Wines, and 4*l*. 4*s*. *per* Ton on all other Wines.]

(C. 2.) Due upon Importation.

And therefore the Goods are forfeited, where Bulk is broke, or there is a manifeſt Intent to do it, before the Cuſtoms paid, tendred, or agreed for. *Forſt*. 47. *R. Hard*. 360.

So any Goods imported to be ſold, tho' they are taken by Way of Reprizal. *R. Cro. El*. 534.

So by the Common Law Cuſtoms are due by the Importation, where any Act is done by Way of Merchandize; as, Bulk broken, Part of the Goods ſold, &*c*. *Per Hale, Hard*. 362.

So by the *St*. 12 *Car*. 2. 4. Goods on Importation are liable to Cuſtoms, tho' by the firſt Rule of Rates they are not paid till the Landing, and for ſo many Goods as are put upon Land. *Ibid*.

And

And therefore, the Information muſt ſay, That they are imported by Way of Merchandize; for it is not ſufficient to ſay, That they were put upon Land as Merchandize. *R. Cro. El.* 534.

[If a Ship is within the Limits of the Port, it ſhall be deemed an Importation; as if it be twenty Miles below the *Hope*, it is within the Limits of the Port of *London*. *Leaper* v. *Smith*, *in Sc. T.* 1721. *Bunb.* 79.]

[Information for treble Value, on *ſtat.* 8 *Ann. c.* 7. *ſſ.* 30. for aſſiſting, *&c. at the Time of unſhipping*, in unſhipping Wines, lies only againſt Perſons actually preſent. *Attorney-general* v. *Flower*, *H.* 1726. *Bunb.* 227.]

[But if a Perſon, tho' not preſent at the running or carrying to his Houſe, afterwards pays the Men for doing it, it is a *being concerned*, and Information lies. *Attorney-general* v. *Woodmaſs*, *H.* 1727. *Bunb.* 247.]

[If the Information is for aſſiſting, or being otherwiſe concerned, *Tempore Exonerationis*; yet perſonal Preſence is not neceſſary, if he gave particular Directions when and where the Goods were to be landed and received. *Attorney-general* v. *Lake*, *M.* 129. *Bunb.* 277.]

[Wheat-meal imported ſhall pay Duty as Wheat, by 22 *Car.* 2. *Jobſon* v. *Selwin*, *H.* 1729. *Bunb.* 281.]

[Goods (as Wearing-apparel) not imported as Merchandize, are not liable to pay any Duty, by 13 & 14 *Car.* 2. *c.* 11. *Chapman*, v. *Laynb*, *M.* 6 *G.* 2. *Str.* 943.]

[Ships taken as Prizes by *Britiſh* Man of War are liable to and muſt pay 5 *l. per Cent.* Duty charged on Goods by 12 *C.* 2. *c.* 4.; but tho' liable to other Impoſts created ſince 1665, yet they have never been paid, and it is conſidered as a Waiver. *Camplin* v. *Bullman*, *H.* 1 *G.* 3. *Parker* 198.]

[But foreign Sails of ſuch Ships taken are not liable to 1 *d. per* Ell by 12 *Ann. c.* 16. & 19 *G.* 2. *c.* 27. for when the Ship becomes *Britiſh*, the Sails do ſo too. *Ibid.*]

(C. 3.) **When not due.**

But Goods wrecked are not forfeited, tho' the Cuſtoms are not paid. *Cro. El.* 534. *R. Vau.* 161. *Vide Wreck.*

So by the *St.* 12 *Car.* 2. 4. *S.* 15. Prize-Wines ought not to pay Tonage of Cuſtom.

So by Importation, if it be not by Way of Merchandize, as by Default of Victuals, Streſs of Weather, *&c.* Cuſtoms are not due till Landing. *Per Hale*, *Hard.* 362.

So, if an Agreement be made for Cuſtoms with the Deputy of the Cuſtomer, who acts as ſuch, tho' he be only the Deputy of a Deputy; for the Merchant cannot examine his Authority. *R. Cro. El.* 534.

So, if the Agreement be for all Goods generally, without ſhewing the particular Goods imported, when they are Goods taken by Way of Reprizal, the Certainty of which is not known. *R. Cro. El.* 534.

So, where Tonnage and Poundage is given by the *St.* 12 *Car.* 2. 4. *viz.* 12 *d. per* Pound, and by another Statute an additional Duty of 6 *d. per* Pound is given, and 5 *l. per Cent.* allowed to the Merchant by the firſt Act, the Allowance ſhall be the ſame out of the Additional Duty, for they are incorporated. *Per* 3 *Bar. Hard.* 349.

So by the *St.* 12 *Car.* 2. 4. On due Entry made of Wines imported, 12 *l. per Cent.* ſhall be allowed for Leakage. But this ſhall be upon Entry of the whole Quantity put on board the Ship. *R. Hard.* 360.

And *by the ſame Statute S.* 4. if the Goods of a Subject born be taken on the Sea by Enemies or Pirates, or periſh in a Ship, taken, or periſhing, whereof Duties were paid or agreed for, on Proof, *&c.* before the Treaſury or Chief Baron, recorded and allowed in the *Exchequer* and certified to the Officers of the Cuſtoms, He, his Executor or Adminiſtrator, may ſhip in the ſame Port ſo much other Goods as thoſe loſt amounted to in Cuſtom, without paying any Duty.

So by the *St.* 12 *Car.* 2. 4. *S.* 14. All Wines imported in *London*, or elſewhere, ſhall be free from the Duty of Exciſe.

By

By the *ſt.* 12 *Car.* 2. 4. *ſ.* 13. If Wine, for which the additional Duty is paid or ſecured, be exported in 12 Months after Importation, the Duty ſhall be repaid, or the Security diſcharged. *Vide infra.* (C. 4.) Drawback allowed.

By the *ſt.* 1 *Jac.* 2. 4. *ſ.* 4. 7. Importer of Tobacco and Sugar, on Exportation in 18 Months, ſhall be repaid the Duties by him paid on the Importation, or on a Certificate of Bond to export in four Months by the Buyer, and Certificate of the Searcher, that they have been ſhipt, and Oath by the Merchant that they have not been relanded, *&c.* the Security for Duties by this Act ſhall be diſcharged: But the Duties of this Act continued only to 1693. (Continued by 7 *W.* 3. 10. till 1706. by 8 *An.* 13. till 1720.)

By the *ſt.* 1 *W.* & *M. ſeſſ.* 2. 6. Merchant exporting Coffee, Tea, or Chocolate in ſix Months after Importation, ſhall be repaid two Thirds of the Duties by him paid by Virtue of the ſaid Act.

So by the *ſt.* 9 *An.* 11. *ſ.* 39. On Exportation of Leather.

So by the *ſt.* 2 *W.* & *M. ſeſſ.* 2. 4. On Exportation of *Eaſt-India* Goods, Wrought Silks, *&c.* in 12 Months after Importation, the Duties thereby laid ſhall be wholly repaid, or the Security vacated.

So by the *ſt.* 4 & 5 *W.* & *M.* 5. *ſ.* 6. On Exportation of Goods charged by that Act, except Brandy.

And by the *ſt.* 6 & 7 *W.* 3. 18. *ſ.* 12. On Exportation of Glaſs, Stone, and Earthen Wares.

By the *ſt.* 9 *W.* 3. 23. *ſ.* 9. On Exportation of Sugar refined in *England* 3*s. per Cent.* allowed.

By the *ſt.* 1 *An. ſeſſ.* 2. *c.* 3. *ſ.* 18. On Exportation of Malt, Drawback of Duties paid.

So by the *ſt.* 12 *An.* 2. *ſ.* 21.

By the *ſt.* 9 *An.* 12, and 10 *An.* 19. On Exportation of Hops, Sope, Paper, *&c.*

By the *ſt.* 7 *Geo.* 20. *ſ.* 10. The Merchant ſhall be intitled to his Drawback, if he ſhip his Goods in three Years.

By the *ſt.* 3 *Geo.* 7. *ſ.* 40. All Drawbacks on any Goods ſhall continue till the Duties ceaſe.

But by the *ſt.* 4 & 5 *W.* & *M.* 15. *ſ.* 13. No Debenture of Drawback ſhall be admitted but on Oath by the Real Exporter, as Intereſted in the Propriety and Hazard of the Goods exported, or acting by Commiſſion is concerned in the Direction of the Voyage, ſo as to be able to judge, that the Goods are really and *bonâ fide* exported, and not relanded or intended to be relanded.

By the *ſt.* 6 & 7. *W.* 3. 18. *ſ.* 12. Oath on Exportation of Glaſs, Stone, and Earthen Wares ſhall be, That the Duties were truly paid or ſecured, and Security ſhall be given, that they ſhall not be relanded, before the Cuſtomer or Comptroller of the Port.

By the *ſt.* 7 *W.* 3. 10. *ſ.* 5. On Exportation of Tobacco the Debenture ſhall be on Parchment, and the Oath printed thereon *in hæc Verba* ſigned and ſworn by the Exporter, That all the Tobacco there certified is really exported beyond the Seas on his own Account, or on Account of *A.* for whom he acted by Commiſſion, and is not landed, nor intended to be relanded in *England.*

And by the *ſt.* 8 *An.* 13. *ſ.* 16. Exporter, or other concerned in Relanding, *&c.* forfeits double the Value of the Drawback, and the Boats, Horſes, *&c.* uſed in it.

And by *ſ.* 18. No Debenture ſhall be allowed on Exportation of Tobacco for *Ireland* till Certificate, *&c.* of Landing there.

(So by the *ſt.* 5 *Geo.* 11. *ſ.* 5. on Exportation of any Goods for *Ireland.*)

Nor by *ſ.* 20. On Exportation of any Tobacco in Ships under 20 Ton.

So by the *ſt.* 6 *Geo.* 21. *ſ.* 49. If Tobacco entred, as exported for Foreign Parts, ſhall be landed in *Ireland,* double the Drawback ſhall be forfeited, and the Debenture for the Drawback ſhall become void.

[No Drawback is due for Pepper unleſs exported within the Year, or prevented by Accident. *Cooke* v. *Attorney-General, M.* 11 *W.* 3. *Parker* 266.]

[If the Property is changed after ſhipping for Exportation the Drawback is loſt. *Cooke* v. *Attorney-General*, *M.* 11 *W.* 3. *Parker* 266.]

[Salt ſhipped for or landed in *Scotland* does not diſcharge Debenture. *R.* v. *Orpheur*, *H.* 13 *W.* 3. *Parker* 269.]

[By *ſtat.* 19 *G.* 2. *c.* 12. There is a Drawback of 9*s.* 4*d.* on Plate-Glaſs, and 2*s.* 4*d.* on Green Glaſs, *per Cwt.* exported.]

[By the ſame, a Drawback of the additional Duty on *Britiſh* Spirits.]

[By 21 *G.* 2. *c.* 2. Drawback of the additional Poundage.]

[By 21 *G.* 2. *c.* 30. Six-pence *per* Pound Premium on Importation of Indico from the Plantations; and when it is exported the Premium is returned.]

By 23 *G.* 2. *c.* 20. *American* Raw-Silk is imported Duty-free.]

[By 23 *G.* 2. *c.* 24. A Bounty of 3*l.* *per Cent.* was given on all Sums employed by the *Britiſh-Herring-Fiſhery*.]

[By *ſtat.* 26 *G.* 2. *c.* 9. Further Advantages and Regulations for the *Britiſh Herring-Fiſhery*.]

[By *ſtat.* 24 *G.* 2. *c.* 51. *American* Pot and Pearl-Aſhes are imported Duty-free.]

By *ſtat.* 26 *G.* 2. *c.* 15. Intereſt at 3*l.* *per Cent.* is allowed on Corn Debentures unſatisfied ſix Months.]

[By *ſtat.* 29 *G.* 2. *c.* 15. Bounties granted on *Britiſh* and *Iriſh* Linen exported; under 5*d.* *per* Yard ½*d.* under 6*d.* *per* Yard 1*d.* under 18*d.* *per* Yard 1½*d.*]

[And the Duties are taken off Foreign Raw Linen-Yarn made of Flax.]

[By *ſtat.* 33 *G.* 2. *c.* 28. Duties on Rum are repaid on Exportation.]

[By *ſtat.* 1 *G.* 3. *c.* 7. Drawback of 8*s.* *per* Barrel on Strong Beer exported; Bounty of 1*s.* *per* Barrel when Malt is under 24*s.* *per* Quarter.]

[By *ſtat.* 2 *G.* 3. *c.* 5. Bounty of 3*l.* 12*s.* *per* Tun on Corn-Spirits exported.]

[*Stat.* 4 *G.* 3. *c.* 26. grants Bounties on Hemp and Rough Flax imported from *America*, of 8*l.* *per* Ton, to *Midſummer* 1771, 6*l.* to 1778, and 4*l.* to 1785.]

[By *ſtat.* 5 *G.* 3. *c.* 29. Drawback of 1*s.* *per lb.* of 24 *oz.* on Raw-Silk exported to *Ireland*, and all the additional Duty on Thrown-Silk.]

[By *ſtat.* 6 *G.* 3. *c.* 45. Bounty of 2*s.* 4½*d.* *per cwt.* on Exportation of *Britiſh*-made Cordage, except of *American* Hemp.]

[Drawback on Foreign Rough Hemp exported diſcontinued, but renewed by *ſtat.* 9 *G.* 3. *c.* 35.]

[By *ſtat.* 6 *G.* 3. *c.* 46. Drawback of half additional Duty on *Italian* Silk-Crapes and Tiffanies re-exported.]

[By *ſtat.* 7 *G.* 3. *c.* 30. Sago and Vermicelli may be imported Duty-free from *America* till 1781.]

[By *ſtat.* 7 *G.* 3. *c.* 47. Duties on Logwood are diſcontinued; on Liquorice, altered.]

[By *ſtat.* 7 *G.* 3. *c.* 56. Inland Duty of 1*s.* *per lb.* on Black and Singlo Teas conſumed in *Britain*, taken off, and Drawback granted on Teas exported to *Ireland* or *America*, amended by *ſtat.* 12 *G.* 3. *c.* 7. and by *ſtat.* 12 *G.* 3. *c.* 60.]

[By *ſtat.* 9 *G.* 3. *c.* 35. So much of the Duties on Iron imported in Foreign Ships, as exceeds the Duties on Iron imported in *Britiſh* Ships, ſhall not be drawn back on Exportation.]

[By *ſtat.* 9 *G.* 3. *c.* 38. Premiums are granted on *American* Raw-Silk imported, for every 100*l.* Value, 25*l.* till 1777, 20*l.* till 1784, and 15*l.* till 1794.]

[*Stat.* 11 *G.* 3. *c.* 31. grants a Bounty of 30*s.* *per* Ton on Veſſels employed in the *White-Herring Fiſhery*, to 1778.]

[By *ſtat.* 11 *G.* 3. *c.* 38. The *Greenland-Fiſhery* is regulated; and Whale-Fins, Oil, *&c.* may be imported Duty-free; and other Encouragements are given.]

[By *ſtat.* 11 *G.* 3. *c.* 50. Bounties are granted on White Oak Staves and Heading imported from *America*.]

[By

[By *ſtat.* 13 *G.* 3. *c.* 43. Former Bounties on Corn repealed, and the following granted:

	s.	*d.*
Wheat under 44*s.* *per* Quarter	5	0
And the ſame for Wheat-Malt		
Rye under 28*s.*	3	0
Barley under 22*s.*	2	6
And the ſame for Malt		
Oats under 14*s.*	2	0
Oatmeal	2	6

[Corn entered for Exportation, and begun to be ſhipped whilſt under the Rates allowed, may be exported, and Bounty received, tho' the Prices riſe, if ſhipped in 20 Days after.]

[By *ſtat.* 14 *G.* 3. *c.* 64. Price to be regulated by Average-Price at neareſt Market, laſt Market-Day.

[By *ſtat.* 13 *G.* 3. *c.* 44. A Drawback of the whole Cuſtoms on Teas exported to *America*.]

[By *ſtat.* 17 *G.* 3. *c.* 27. Drawback of the whole Duty on Tea exported to *Ireland*.]

(C. 5.) Aulnage.

By the *ſtat. de Prov.* 27 *Ed.* 3. 4. is granted to the King for every Cloth to be ſold, above the Cuſtoms due, a Subſidy, *viz.* for every Cloth of Aſſiſe not in Grain 4*d.* half in Grain 5*d.* of Scarlet 6*d.* of every half ſuch Cloth half ſo much; but nothing for Cloth leſs than an half Cloth, or made for the Uſe of him and his Family, or if ſold again when it hath once paid.

And the *Aulnager* ſhall take for his Fee of the Seller for every Cloth of Aſſiſe a Halfpenny, for every half Cloth a Farthing and no more.

The *Aulnager* is an Officer appointed to meaſure by the *Aulne* or Ell all Cloths, and collect the Duties for the Cloths ſo meaſured. *Nom. Verb. Alnage.*

This Statute gives the firſt Duty of *Aulnage* upon Cloths. *Hard.* 206. *Semb. cont. Hard.* 214.

By the *ſtat.* 11 *H.* 4. 6. The *Aulnager* ſhall have a new Seal, and ſet it, after Search and Survey, to all Cloths and Dozens.

And by the ſeveral Statutes 17 *R.* 2. 2. 1 *H.* 4. 13. 9 *H.* 4. 2. 11 *H.* 4. 6. 11 *H.* 6. 9. 1 *R.* 3. 8. 4 *Ed.* 4. 1. 8 *Ed.* 4. 1. and 8 *El.* 2. Several Regulations are made with reſpect to the Meaſure and Sealing of Cloths, and the Appointment, Office, and Duty of *Aulnager*.

By theſe Statutes the Duty of *Aulnage* ſhall be paid for new Cloths made of Wool, tho' not named in any of the Statutes. *R. Hard.* 205. 215.

(C. 6.) Search and Seiſure of Goods forfeited, and Proceedings afterwards.

By the *ſtat.* 12 *Car.* 2. 19. (made perpetual by 3 *Geo.* 7.) If any cauſe Goods to be conveyed away before Entry made and the Cuſtomer, *&c.* agreed with, on Oath before the Lord Treaſurer, any of the Barons, or Chief Magiſtrate of the Place where the Offence was committed, or next adjoining, the ſaid Lord Treaſurer, Baron, *&c.* may iſſue a Warrant to any, with the Aſſiſtance of the Sheriff, Juſtice of Peace, or Conſtable, to enter the Houſe, where the Goods are ſuſpected to be, who may enter in the Day within a Month after the Offence: And in Caſe of Reſiſtance break open the Houſe and ſeiſe the Goods concealed.

But, by this Statute, if the Information, on which the Houſe is ſearched, proves falſe, the Party grieved may in Treſpaſs recover his Damages and Coſts.

[On an Action againſt an Officer for a Seiſure, probable Cauſe is no Defence; he ſeiſes at his Peril. *Legliſe* v. *Champante*, *M.* 2 *G.* 2. *Str.* 820.]

[Officer

[Officer informing and with Warrant from Commiſſioners of Exciſe or Juſtice of Peace, entring Houſe, is liable to Treſpaſs if he finds nothing. *Boſtock* v. *Saunders*, *T.* 13 *G.* 3. 3 *Wilſ.* 434.]

[Whether Commiſſioner or Juſtice granting Warrant is liable to Action, if good Ground of Suſpicion is not laid before him, *Q.* *De Grey* C. J. *Semb. cont.* *Gould* J. and *Blackſtone* J. *Semb. pro.* The Words of the Act are if *he* ſhall judge it reaſonable. *Ibid.*]

[Officer informing and with Writ of Aſſiſtance entring Houſe, if he finds nothing, is a Treſpaſſer *ab Initio*. *Anon.* 3 *Wilſ.* 437.]

[On a Writ of Aſſiſtance if the Officer enters without a Conſtable, he is a Treſpaſſer tho' he finds uncuſtomed Goods: And if in a Town or County of itſelf, the Conſtable muſt be of the Town, not of the County at large. *Anon.* 3 *Wilſ.* 63.]

After Seiſure for any Cauſe, the Officer ſhall tranſmit an Account thereof to the Solicitor of the Cuſtoms in *London*, who ſhall enter it in his Book, and by a Clerk in the Remembrancer's Office ſhall have a Writ of Appraiſement directed to the ſworn Appraiſers in the Port of *London*, or, if the Seiſure be elſewhere, to the Collector, *&c.* of the Port where the Seiſure was, or other Perſons near, to make an Appraiſement. *M. P. Ex.* 139, 216.

The Appraiſement ſhall be made by two or more upon Oath. *M. P. Ex.* 140, 218.

Afterwards, the Writ ſhall be returned with an Indenture annexed containing the Name of the Seizor, and the Time, and Quantity of the Goods ſeiſed, which being regiſtred by the Regiſter of Seiſures in the Port of *London*, ſhall be returned to the Office, out of which the Writ iſſued, and the Goods ſhall be proclaimed in Court. *M. P. Ex.* 140, 248.

In the mean Time an Information ſhall be filed, having the ſame Day with the Writ of Appraiſement, at the Suit of the Officer who ſeiſes, and being ſigned by a Baron, ſhall be inrolled with the Writ, Indenture and Proclamation. *M. P. Ex.* 141.

[Regularly, the Writ of Appraiſement and Delivery cannot iſſue till the Information is in, but by Conſent it may iſſue in the Vacation, Defendant giving Security; and when the Information comes in, the Court may order a new Writ, and the old appraiſed Value to be returned on it. *Scott* v. *Caſwall*, *in Sc. M.* 1718. *Bunb.* 27.]

[If Goods are appraiſed too high, the Court may grant a new Writ of Appraiſement. *Evans* v. ——, *in Sc. M.* 1718. *Bunb.* 49. *Allen* v. —— *H.* 1724. *Bunb.* 185.]

[If Goods condemned are bought and afterwards ſeized, the Condemnation cannot be given in Evidence, but muſt be pleaded. *Per two Barons, contra one.* *Carter* v. *Saywell*, *in Sc. M.* 1721. *Bunb.* 52.]

[But if the Goods have been ſold by the Purchaſor to a third Perſon, he may give Parol Evidence of their being condemned Goods.]

[On Information of Seizure of *Britiſh* and Foreign Coins, no Need of Writ of Appraiſement or ſecond Proclamation; Judgment may be for the Coins themſelves. *Attorney-General* v. *Lade*, *H.* 3 *P.* 19 *G.* 2. *Parker* 57.]

If no Claim be entred within eight Days, if the Seiſure was in the Port of *London*, if in another Port within 14 Days, after the Proclamation made and a Rule for it entred upon the Indenture, the Goods are condemned, and the Seizor ſhall make a *Debet*, and thereupon pay a Moiety of the appraiſed Value into the *Exchequer*, whereupon the Goods ſhall be delivered to him by Order of the Commiſſioners of the Cuſtoms. *M. P. Ex.* 141, 143.

[Claim, before Writ of Appraiſement returned, muſt be entred in the Book in the Office, but if after the Return it muſt be indorſed on the Writ.]

[Since 8 *Ann.* the Court will not make the Claimant, tho' in low Circumſtances, ſwear to his Claim, tho' of 10,000*l.* Value. *Attorney-General* v. *Melliſh*, *in Sc. H.* 1717. *Bunb.* 21. *Allen* v. *Cooper*, *in Sc. M.* 1718. *Bunb.* 21.]

[If the Goods in one Seizure by two Officers, are appraiſed and condemned by two Writs, and the Goods not particularly deſcribed, and no Information, ſo

ſo no Condemnation on the Roll; tho' the Goods are ſold, and the Moieties paid to the Crown and the Officer, the Court will ſet aſide the Condemnation, and order an Attachment againſt the Officers. *Harwood* v. *Faulke, in Sc. M.* 1721. *Bunb.* 89.]

[Tea was ſeized, and Part carried away then, and the Reſt ſealed down and carried away afterwards, and on this two Writs of Appraiſement, and two Informations; which were not ſet aſide, the Court being divided. *Warwick* v. *Rawlins, H.* 1721. *Bunb.* 96.]

If upon Proclamation any one offers more than the appraiſed Value, his Name ſhall be recorded upon the Indenture, and charged with the Sum offered; and if there be no Claim, he ſhall have a Writ of Delivery ſigned by a Baron, paying a Moiety into the *Exchequer*, and a Moiety of the Appraiſement and the Sum advanced, to the Seizor. *M. P. Ex.* 142.

[On Seizure, Information ſhould be filed, then Writ of Appraiſement taken out; on the Return, Defendant enters his Claim, and may move for Writ of Delivery: If Proſecutor delays filing Information, or ſuing Writ of Appraiſement, Defendant, on entring his Claim, may move for a Writ of Delivery; no certain Rule as to Delay; but if Seizure in Vacation, and no Information filed next Term, if it could have been tried that Term, it is Ground for a Writ of Delivery. *Johnſon* v. *Sowers, in Sc. M.* 1718. *Bunb.* 30.]

[A Bidder ſhall not be diſcharged, tho' Goods ſink in Value pending a Claim put in after the Bidding; and the Court may order Execution by *Fi. fa.* againſt him, and not accept of the Forfeiture of the Bidding-Money. Regularly, the Proceſs of the Pipe ſhould iſſue. *Sewell* v. *Johnſon, T.* 1721. *Leaper* v. *Bound, M.* 1721. *in Sc. Bunb.* 76.]

[If the Bidder has been at Expence, the Court will not rate the Fine, tho' a Compoſition be made by Licence between the Officer and the Claimer. *Crawford's Caſe, H.* 1721. *Bunb.* 100.]

[In rating the Fine, the Court will inquire if there is any Bidder, and take his Intereſt into Conſideration. *Crawford* v. *Hyam, T.* 1722. *Bunb.* 116.]

[It is diſcretionary in the Court to grant a Writ of Delivery or not: And they will not for Tobacco Stalks, tho' wetted at Sea. *Vincent* v. *De Laar. T.* 31 G. 2. *Parker* 196.]

[The Court refuſed a Writ of Delivery for a Ship ſeized 10 Days before, tho' loaded with periſhable Commodities, on a Suſpicion it was going to *Gottenburgh*. *Parker* v. *Aſton, H.* 1717. *Bunb.* 21.]

[Removing Goods from one Port to another, without a Permit, is an unlawful Importation, and not within the Juriſdiction of the Exciſe; and if ſuch Goods are ſeized by their Officer, on an Information before them, the Court of *Exchequer* will grant a Writ of Delivery. *Warwick* v. *White, P.* 1722. *Bunb.* 106.]

[If the Witneſſes for Informer are at great Diſtance, old and infirm, and unable to travel in Winter, it is good Ground to deny Writ of Delivery of Goods for Delay of Proſecution on 14 *C.* 2. *c.* 11. *Kemp* v. *Laſkey. P.* 22 *G.* 2. *Parker* 92.]

[On Seizure of periſhable Goods, Court has Power to order Sale without Conſent of Claimer. *Foſter qui, &c.* v. *Cockburn, P.* 19 *G.* 2. *Parker* 70.]

[But pending Error, not. *Ibid.*]

[Or if it does not clearly appear that the Goods are periſhable. *Ibid.*]

[Watches are periſhable Goods. *Gatehouſe* v. *Reith, in Sc. P.* 1721. *Bunb.* 74.]

[The Party may proceed in the *Exchequer*, or before the Juſtices; and if there is no Delay in them, the Court will not interfere. *Gregory* v. *Hunt, M.* 1723. *Bunb.* 139.]

[Juſtices of Peace have Juriſdiction of Seizure of Brandy, wherever it is; but of the Waggon and Horſes, only if they are running Goods *from* the Water-ſide. *Rex* v. *Hollingſby, P.* 1723. *Bunb.* 130.]

[On an Information *Qui tam*, for importing Brandies in unſizeable Caſks, the Court ordered they ſhould pay Duties, tho' the Statute ſays they ſhall be forfeited. *Doe* v. *Cooper, P.* 1719. *Bunb.* 44.]

[On Information for running Goods, filed but not entered in the Book, *Capias* may iſſue as the firſt Proceſs. *Attorney-General* v. *Randall*, *H.* 1725. *Bunb.* 209.]

[There is no Right to ſeize contraband Goods, unleſs they are landed or offered to ſale; mere bringing the Ship into Port gives no Right to ſeize. *Smyth* v. *Reynolds*; *P.* 5 *G.* 3. 2 *Wilſ.* 257.]

[If a Cuſtomhouſe-Officer ſeizes Goods, exhibits Information, and proceeds to Condemnation, the Right of Action (enacted to be brought in a Month for a pecuniary Penalty) attaches in him, and no other can bring the Action till a Month from the Condemnation. *Trott* v. *Welſh*, *M.* 3 *G.* 3. 3 *B. M.* 1357.]

[Attorney-General (as well as Officer) has Coſts by 8 *Ann. c.* 7. where Judgment for the King. *Attorney-General* v. *Munn*, *H.* 22 *G.* 2. *Parker* 91.]

[On Information for the King and the Party Defendant is not intitled to Judgment, as in Caſe of a Nonſuit in an Action on 14 *G.* 2. *c.* 17. *Kemp* v. *Laſkey*, *P.* 22 *G.* 2. *Parker* 92.]

[An Officer may ſue *Qui tam*, *&c.* tho' he has no Right to any Part of the Forfeiture or Benefit from it.]

[A *Fortiori* if he is to have a collateral Reward.]

[In ſuch Caſe Judgment for the King alone. *Malden* v. *Bartlett*, *M.* 24 *G.* 2. *Parker* 105.]

[Information for Penalty abates by Defendant's Death after Trial and before Judgment, and this may be ſuggeſted on the Roll and confeſſed by Attorney-General to ſave Writ of Error. *Attorney-General* v. *Buckley*, *H.* 10 & 11 *W.* 3. *Parker* 264.]

[The Court ſtopt an Action, becauſe Defendant would not admit the Seizure which the Officer could not prove, tho' two Terms had paſſed before the Information filed. *Tanner* v. *Alfriend*, *in Sc. H.* 1718. *Bunb.* 37.]

[If a Seizure is made by a proper Officer, and a Condemnation in the *Exchequer*, *B. R.* will not examine the Property on an Action of Trover; but if by a Stranger, it will. *Horne* v. *Booſey*, *T.* 6 *G.* 2. *Str.* 952.]

[An Enemy's Ship with prohibited Goods may be ſeized by Cuſtomhouſe-Officer, tho' already ſeized as a Perquiſite of the Admiralty; and Prohibition ſhall go againſt Admiralty. *Score* v. *Ld. Admiral*, *P.* 8 *Ann.* *Parker* 273.]

[Prohibited Goods (as *French* Wines in Time of *French* War) bought with the King's Money and imported for the Uſe of his Family, are not forfeited. *Bruſe* v. *Harcourt*, *Attorney-General*, *T.* 8 *Ann.* *Parker* 274.]

[On Information of Seizure it is not neceſſary to ſet forth the Quantity nor Kind (becauſe they are made certain by the Writ of Appraiſement): but in Information of *Devenerunt* it is neceſſary, and for Want thereof Judgment ſhall be arreſted. *Nat.* v. *Bartlett*, *M.* 9 *Ann.* *Parker* 278.]

[Where there is a Penalty which may be ſued for by a Common Informer within a Year, Attorney-General may file Information for Diſcovery waiving Penalties, after the Year; but not before; if he doth, Defendant may demurr. *Attorney-General* v. *Creſner*, *M.* 9 *Ann.* *Parker* 279.]

[By *ſtat.* 3 *G.* 3. *c.* 22. All Ships and Goods (except thoſe liable to be burnt) ſeized by Officers of Cuſtoms ſhall be ſold to the beſt Bidder, and the Price go half to the Officer, half to the King.]

[Any Veſſel not above 50 Ton, having Foreign Spirits, (except two Gallons a-Head for the Crew) or Tea or Tobacco on board, in any Harbour, or hovering within two Leagues of Shore, is forfeited; and ſhall be burnt, or uſed in the King's Service.]

[By *ſtat.* 5 *G.* 3. *c.* 43. Goods paying Duty *ad Valorem*, under-rated, may be carried by Officer to the King's Warehouſe, the Collector to pay the Value ſworn to, and 10*s. per Cwt.* Addition, and the Duties paid, to the Proprietor; the Goods to be ſold, the Money advanced to be replaced, and the Surplus paid, half to the Officer, half to the Sinking Fund.]

[By *ſtat.* 9 *G.* 3. *c.* 6. Exciſe-Officers may ſeize Horſes and Carriages uſed in ſmuggling Foreign Spirits.]

(D) Reſtraint of Trade.

(D. 1.) By the King's Charter.

THE King by his Charter cannot make a Total Reſtraint of Trade, for ſuch a Patent will be void. 3 *Mod.* 132. *Vide Ante*, (B.)

Tho' it relates only to Paſtime or Recreation, &c. 11 *Co.* 87. *b.* *Vide in Prerogative*, (D. 36.)

Tho' it be the Trade of a Merchant, or a Mechanic Trade. 1 *Rol.* 4.

And therefore, the King by his Patent cannot reſtrain any, That he ſhall not trade by Sea. 1 *Rol.* 4.

Nor can he grant to an Abbot, That he alone ſhall have ſuch a Port. 1 *Rol.* 5.

So the King by his Charter cannot make a Grant, That none ſhall uſe his Trade within ſuch a Town, unleſs he be free of the ſame Town. *R.* 8 *Co.* 125. *a.* *Adm. Lut.* 564. *Vide in By-Law*, (B. 3.)

That none practiſe Phyſick without a Licence from the College of Phyſicians, unleſs it was confirmed by Parliament. *Per* 2 *J.* 1 *Rol.* 5. *Vide in Phyſicians*, (A.)

That all ſweet Wines imported into *England* be landed at *Southampton*, and not elſewhere. 2 *Rol.* 114.

That all Merchandizes imported into ſuch a City, be left at the *Guildhall* there for 40 Days. 2 *Rol.* 113, &c.

That none ſhall uſe a Trade, unleſs he be a Member of ſuch a Corporation. *Dub. Hard.* 55.

So the King by his Charter cannot grant, That ſuch a Corporation, &c. ſhall uſe a Trade at ſuch a Place, excluſive of all others not free of the ſame Corporation. *Dub.* 3 *Mod.* 127. *R. Hard.* 108, 9. *Dub. Comb.* 53. *R. Skin.* 361.

Or, That ſuch and ſuch deal in ſuch and ſuch Commodities excluſive of others. 2 *Rol.* 174. *l.* 45. *Vide Poſt*, (D. 4.)

That *A.* ſhall have the ſole Printing of Bonds, &c. which others printed before. *Semb.* 3 *Mod.* 77.

That only 100 Perſons ſhall trade there. 1 *Rol.* 4.

That the Maſter, Wardens and Fraternity of *Trinity Iſle* in *Ireland* ſhall have the Sole Buying and Selling of Merchandizes imported into the City of *Dublin*. 2 *Rol.* 113.

That if any trade to the *Canaries* without Leave of ſuch and ſuch Perſons, his Ship and Goods ſhall be forfeited. *R.* 1 *Sid.* 441. 1 *Mod.* 18. 1 *Vent.* 47.

That a Corporation ſhall have the Sole Trade to the *Eaſt-Indies*, tho' it be a Country of Infidels. *R. cont.* 3 *Mod.* 127. *Skin.* 132, 165, 197, 223. *Vide Infra.*

So the King by his Charter cannot make a Monopoly. *Vide Poſt*, (D. 4.)

But where a Place for Trade is diſcovered with the great Peril of any Perſons, the King may grant to them the Sole Trade there: As, the Trade to *Greenland*. *Adm.* 1 *Rol.* 5.

The Trade to the *Eaſt-Indies*, to the *Eaſt-India* Company only. *D.* 2 *Rol.* 115. *Semb.* 1 *Ver.* 130, 307. 2 *Ca. Ch.* 165. *R. cont.* as it ſeems. *Skin.* 334, 361. *R. acc.* 36 & 37 *Car.* 2. *Skin.* 132, 165, 197, 223. 3 *Mod.* 127.

So the King by his Charter cannot impoſe the Forfeiture of Goods upon Pretence of a Regulation of Trade. 1 *Ver.* 307. *Semb.* 1 *Vent.* 47. *Vide Prerogative*, (D. 38.)

So he cannot inhibit the Importation of Goods except at ſuch a Port. 2 *Inſt.* 61.

[*Chancery* will never eſtabliſh a Right claimed under a Charter from the Crown, till there has been an Action at Law to try the Right. *Blanchard* v. *Hill*, *M.* 1742. 2 *Atkyns* 484.]

(D. 2.)

(D. 2.) By By-Law, or Cuſtom.

So a By-Law for the Total Reſtraint of Trade will be void. *Vide By-Law*, (C. 3.)

So a Cuſtom which makes a Total Reſtraint of Trade will be void: As a Cuſtom, that he ſhall not uſe a Trade in ſuch a City, *&c.* unleſs it be founded upon ſome Conſideration. *Mo.* 342. *Sti.* 111. *R.* 2 *Lev.* 210. *R.* 3 *Lev.* 241.

So a By-Law, that he ſhall not uſe the Trade of a Taylor, *&c.* without Licence, *&c.* does not extend to him who makes Veſtments for *A.* and his Family, as a Servant in his Houſe. *R.* 1 *Rol.* 4.

But a Cuſtom, which reſtrains Trade *ſub Modo*, may be good: And therefore, the Cuſtom of *Foreign bought, and Foreign ſold*, whereby a Man not free of a City, *&c*, will be reſtrained from buying or ſelling Goods to other Foreigners within ſuch City, *&c.* is good. *Dy.* 279. *b.* *R. Jon.* 162. *Adm.* 2 *Rol.* 202. *l.* 45.

A Cuſtom that none ſhall uſe a Trade there, unleſs he be free of the *Guild. R. in London* 8 *Co.* 125. *Dub.* whether good in another City. 1 *Sal.* 204. *Mod. Ca.* 21. *Vide By-Law*, (B. 3.—C. 3.)

So a Cuſtom, that none ſhall uſe the Trade of a Dyer in ſuch a Town without the Licence of the Archbiſhop, will be good. 8 *Co.* 125.

So a Preſcription, That none in the *Vill* of *D.* who holds of the Manor of *D.* ſhall bake elſewhere than at ſuch a Bakehouſe in the ſame Town, will be good. *Ow.* 67. *cont.* But it is ſaid that the ſame Caſe was *R. acc.* 8 *Co.* 125. *b.* *Cro. El.* 203. 1 *Leo.* 142.

A Cuſtom that a Butcher do not ſell Fleſh in his own Houſe upon a Market-Day in a Town, where the Prior has a Market, but muſt ſell upon a Stall in the open Market. 8 *Co.* 127. *a.*

(D. 3.) By Contract.

So, if a Man for good Conſideration reſtrains himſelf from the Exerciſe of his Trade in a particular Place, he ſhall be bound by it: As, if a Man in Conſideration, that the Plaintiff would buy all the Goods in his Shop, promiſes that he will not afterwards uſe his Trade in the ſame Shop. *R. Al.* 67. *R. Noy* 98. *R.* 2 *Rol.* 201.

Or, that he will not uſe his Trade afterwards in the ſame Street in *London*. *R.* 2 *Cro.* 597. *Per Roll, Sti.* 311.

So in Conſideration, that the Plaintiff bought his decayed Wares at the firſt Price, he will not uſe his Trade afterwards in the ſame Town in the Country. *R. per* 3 *J. and aff. in Error* 2 *Cro.* 596. 1 *Rol.* 16. *l.* 50. *Jon.* 13. 2 *Rol.* 201.

So in Conſideration, that the Plaintiff had married his Daughter. *R. and aff. in Error*, 1 *Rol.* 17. *l.* 5. *Al.* 67. *Sti.* 111.

So, in Conſideration that he took his Houſe for 21 Years, that the Defendant will not ſuffer the ſame Trade in the next Shop during the Term, is good. 2 *Cro.* 326. 2 *Bul.* 136.

[So Bond, with Condition not to ſet up Trade within half a Mile of Plaintiff's Dwelling-houſe, nor any other that ſhe, or her Executors or Adminiſtrators ſhall remove to, to carry on Trade of a Linen-Draper, nor to inſtruct or aſſiſt any other, good; on Conſideration that Plaintiff had taken Defendant to inſtruct and maintain without Money. *Cheeſman* v *Ramby*, *H.* 13 *G. Fort.* 297. S. C. *Cheſman* v. *Nainby*, Affirmed on Error in *B. R.* and in Parliament; the twelve Judges attending, and unanimous. *Str.* 739. *Ld. Raym.* 1456.]

[So Articles not to ſet up the Trade taught, within the Bills of Mortality, on Penalty of 44*l.* good. *Clerke* v. *Comer*, *T.* 7 *G.* 2. *B. R. H.* 53.]

But a Promiſe, or Obligation, which binds any to a Total Reſtraint of his Trade, is unlawful and void. *Adm.* 2 *Cro.* 596.

As, an Obligation, that he will not afterwards uſe the Trade of a Dyer. 2 *H.* 5. 5.

So an Obligation, that he will not buy Sheeps-Trotters of any Perſon, with whom the Obligee deals or ſhall deal, or of more Perſons than he buys of; for this may amount to a total Reſtraint of his Trade. *R. in B. R. Tr.* 1 *W. & M. inter Thompſon and Harvy, Sho.* 2.

So an Obligation on Promiſe, which reſtrains the Total Uſe of his Trade for four Years, will be void.

Tho' it be only in three Counties, *Ow.* 143.

Or, that he ſhall not uſe his Trade for four Years in *Nottingham*. *R. Mo.* 115. *Al.* 67. *R. Ow.* 143.

So an Obligation, or Promiſe, which reſtrains the Total Uſe of a Trade in a particular Place, is void, unleſs it appears to be made upon good Conſideration. *Per Holt, inter Thompſon and Harvy, Sho.* 2. *R.* 2 *Leo.* 210. *Mo.* 242. 3 *Lev.* 242.

So, if it reſtrains the Total Uſe of Trade, tho' it be upon Conſideration. *Al.* 67.

(D. 4.) Monopoly.

By *St.* 38 *Ed.* 3. A Merchant may freely deal in all Manner of Merchandize, notwithſtanding any Charter. 2 *Rol.* 174. *l.* 45, 50.

And therefore, every Grant of the King, which tends to a Monopoly, will be void by the Common Law. 1 *Rol.* 4.

A Monopoly is, when the Sale of any Merchandize or Commodity is reſtrained to one or a certain Number. 11 *Co.* 86. *b.*

And has three inſeparable Conſequents: The Increaſe of the Price, the Badneſs of the Wares, the Impoveriſhment of others. *Ibid.*

And therefore, every Grant, which tends to a Monopoly, will be void: As, if the King grants to *A.* the ſole Making of Cards, *&c.* for 21 Years. *R.* 11 *Co.* 86. 8 *Co.* 125. *a.*

Or the ſole Making of Ordinance for Battery in the Time of War. *Godb.* 254.

That he alone ſhall carry *Kerſyes* out of the Kingdom. *Ibid.*

Or, ſhall have the ſole Importation of Cards into the Kingdom. *R.* 11 *Co.* 88.

That Goods ſhall not be imported, but at ſuch a Port. 2 *Inſt.* 61.

So by the *St.* 21 *Jac.* 2. All Monopolies, and all Commiſſions, Grants, Licences, Letters Patent, *&c.* to any Perſon, Body Politick, *&c.* for any ſole Buying, Selling, Making, Working, Uſing of any Thing, *&c.* ſhall be void.

And any grieved, *&c.* may have an Action on the Statute in *B. R. C. B.* or *Exchequer*, and recover treble Damages and double Coſts.

So all Monopolies are contrary to *Magna Charta*. 2 *Inſt.* 63.

But by a Proviſo in the *St.* 21 *Jac.* 2. It ſhall not extend to Letters Patent, *&c.* heretofore made for 21 Years, or hereafter to be made for 14 Years, for the ſole Working or Making of any new Manufacture, to the firſt Inventor, *&c.* ſo as not cõntrary to Law, or miſchievous to the State, or generally inconvenient.

And any Grant to a City, or Corporation, or to any Company, *&c.* of Art, Occupation, Myſtery, *&c.* for the Maintenance or Ordering of Trade: And Letters Patent made or to be made about Printing, making of Gun-Powder, Ordinance, Shot, or of any Office not decried by Proclamation, ſhall be of the ſame Effect, and no other, as if this Act had not been made.

And this Act ſhall not extend to Letters Patent, Grant, *&c.* about Allom, or Allom Mines, or to the Fellowſhip of Hoaſtmen at *Newcaſtle* about ſelling, *&c.* Sea-Coal or Pit-Coal, *&c.* or to Licences for keeping Taverns, or ſelling Wines, or the Patent to Sir *Robert Manſell* about making Glaſs, or to *Abraham Baker* about Smalt, or Lord *Dudley* about Caſt-Works.

So there may be Letters Patent for 14 Years to the firſt Uſer within the Kingdom, tho' he did not invent, but diſcovered it in foreign Parts. *Per* 2 *J. Sal.* 447.

Vide Ante, (B.)

[*Chancery* governs itſelf by this Rule, whether there is any Act of Parliament on which the Reſtriction is founded. *Blanchard* v. *Hill*, M. 1742. 2 *Atkyns* 484.]

[Authors (and thoſe claiming under them) have Property in their Books, after Publication, in Perpetuity, and they only have a Right to multiply Copies for Sale, and may maintain Action againſt any. This is a common Law Right not taken away by *ſtat.* 8 *Ann. c.* 19. *P. Manſfield* C. J. *Aſton* J. *and Willes* J. *contra Yates* J. *Millar* v. *Taylor*, P. 9 G. 3. 4 *B. M.* 2303.]

[Writ of Error was brought, but Plaintiff after aſſigning Errors ſuffered himſelf to be non-proſs'd, and Injunction in *Chancery* was granted.]

[The ſame Doctrine was confirmed by Decree in *Chancery*. *Becket* v. *Donaldſon*.]

[But on Appeal to the Houſe of Lords this Decree was reverſed: The Doctrine now eſtabliſhed is,

[That Authors or their Aſſigns have not the ſole and excluſive Copy Right in Perpetuity after having publiſhed their Compoſitions, but by *ſtat.* 8 *Ann. c.* 19. have it for fourteen Years from the Publication, and then the Right returns to the Authors, if living, for other fourteen Years.]

[*N. B.* Previous to this Judgment, the Opinions of the Judges were taken, and were as follows;

Five Judges, *viz. Smythe* C. B. *Aſton* J. *Willes* J. *Blackſtone* J. and *Aſhurſt* J. delivered their Opinions,

1. That at Common Law an Author had the ſole Right of firſt publiſhing, and might bring Action againſt any who did it without his Conſent; 2. That the Law did not take away ſuch Right on his publiſhing, and that no Perſon might then do it without his Conſent; 4. But the Author and his Aſſigns had the Sole Right in Perpetuity; 3. And that this Action at Common Law is not taken away; 5. Nor this Right any Way impeached, reſtrained or taken away by *ſtat.* 8 *Ann.*

With theſe five (it is ſaid) Lord *Mansfield* was known to concur; (tho' he did not ſpeak, it being very unuſual, from Reaſons of Delicacy for a Peer to ſupport his own Judgment on an Appeal to the Houſe of Lords.) It may therefore be ſaid there were ſix of the twelve Judges unanimous on all theſe Points.

Two Judges, *viz. Gould* J. *and Nares* J. were of the ſame Opinion on the *1ſt*, *2d*, and *4th* Points (as to the Common Law Right)

One Judge, *viz. De Grey* C. J. was of the ſame Opinion on the firſt Point.

Two Judges, *viz. Adams* B. and *Perrott* B. were of Opinion on the firſt Point that the Author had the ſole Right of firſt publiſhing, but could not bring Action againſt any but ſuch as had obtained the Copy by Fraud or Violence.

One Judge, *viz. Eyre* B. was of a contrary Opinion on this *1ſt* Point, *viz.* that the Author had no Right even before publiſhing, and in all the reſt.

Four, *viz. De Grey* C. J. *Adams* B. *Perrott* B. and *Eyre* B. were of a contrary Opinion on the *2d* and *4th* Points, *viz.* that publiſhing took away the Right.

And ſix, *viz. De Grey* C. J. *Adams* B. *Gould* J. *Perrott* B. *Nares* J. and *Eyre* B. were of contrary Opinion on the *3d* and *5th* Points, *viz.* that the Common Law Right was taken away by 8 *Ann.*

So that of theſe ſix, only two concurred with each other on all the Points, *viz. Nares* J. and *Gould* J. on one Syſtem, and *Adams* B. and *Perrott* B. on another, and the Opinions of the ſix were diverſifed ſix ſeveral Ways.]

[By *ſtat.* 15 G. 3. *c.* 53. The Univerſities in *England* and *Scotland*, and *Eton*, *Weſtminſter* and *Wincheſter* Colleges may hold in Perpetuity their Copy Right in Books given or bequeathed to them.]

[The Proprietor of a Print to intitle himſelf to the Benefit of *ſtat.* 8 G. 2. c. 13. muſt engrave and print his Name, and the Day of firſt Publication, on it. *Sayer* v. *Dicey*, P. 10 G. 3. 3 *Wilſ.* 60.

[B

[By *ſtat.* 17 *G.* 3. *c.* 57. Proprietors of Prints may bring Action on the Caſe, and recover Damages and double Coſts, againſt Perſons copying their Prints in the Whole or in Part, by varying, adding or diminiſhing without Conſent.]

(D. 5.) Reſtraint by Statute.

(D. 5.) If he have not ſerved as an Apprentice. Who are within the Statute.

So by the *St.* 5 *Eliz.* 4. None ſhall uſe a manual Occupation, *&c.* not then uſed by him, but then uſed within the Realm, unleſs he ſhall be brought up therein ſeven Years, as an Apprentice, nor ſet any to work in ſuch Occupation, unleſs he have been an Apprentice, *&c.* on Pain to loſe for every Default 40 *s.* for every Month.

[This *ſtat.* againſt exerciſing Trades without ſerving Apprenticeſhip, extends to Pariſhes as well as Corporations. *Ball* v. *Cobus*, *T.* 30 & 31 *G.* 2. 1 *B. M.* 366.]

And this Statute reſtrains the Uſe of any Trade, without being an Apprentice for ſeven Years, which was then uſed, or is mentioned in the Statute. 8 *Co.* 129. *b.* *Sal.* 611.

As a Draper. *Hard.* 54. 2 *Keb.* 403. *R. Sti.* 223.

Iron-monger. *R. Cro. Car.* 316.

Soap-maker. *Hard.* 54.

Knife-haft-maker. *Ibid.*

Brewer. *R.* 8 *Co.* 129. *b.* 2 *Cro.* 178. 1 *Rol.* 10. *Dub.* 2 *Bul.* 190. *R.* if it be in *London*. *Pal.* 543.

Baker. *R. Mo.* 886. *Hob.* 183. 2 *Rol.* 376.

Taylor. D. 1 *Lev.* 243.

Upholſter. *Dub.* 1 *Rol.* 10. 2 *Bul.* 191. *R.* 1 *Lev.* 243. *Sal.* 611.

Point-maker. *Cro Car.* 516.

Spurrier. *R.* 2 *Cro.* 179.

Tiler. 4 *Mod.* 145.

Fell-monger. *Sal.* 611.

[Indictment on this Statute againſt a Tanner, needs not aver the Want of other Qualifications, which by *ſubſequent* Statutes intitle Perſons to exerciſe that Trade without Apprenticeſhip; but ſuch other Qualification muſt be ſhewn by Defendant, either by Plea, or in Evidence. *Rex* v. *Pemberton*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1035.]

Barber. *R.* 1 *Lev.* 87. 2 *Lev.* 206.

Cook. 8 *Co.* 129. *b.*

And a Perſon cannot uſe a Trade within the Reſtraint of the Statute, to which he does not ſerve as an Apprentice for ſeven Years; tho' he be a Freeman of the City of *London*. *R.* 1 *Sand.* 311.

Tho' he be an Alien, or Denizen. *R. Hut.* 132.

Tho' he have ſerved as an Apprentice to another Trade. *R. Sho.* 266. *Cont.* 4 *Leo.* 9. 2 *Bul.* 190.

Tho' ſhe was a Widow to a Tradeſman within the Statute, for that does not make her an Apprentice. *Noy* 5. Except where ſhe aſſiſted her Huſband ſeven Years. *Carth.* 163.

Tho' he ſerved beyond Sea for ſeven Years, if he was not bound by Indenture. *Per Holt in Surry*, 10 *W.* 3. *Sal.* 67. *

* The Book ſeems *cont.*

Tho' he alledge a Cuſtom to excuſe him. *Dub. Pal.* 542.

So a Perſon, not Apprentice for ſeven Years, cannot employ others, who have ſerved ſeven Years, in the exerciſing of the Trade, for that is uſing of the Trade. *R. Sho.* 241. 3 *Mod.* 315. *Per* 3 *J. Dolb. cont. Sal.* 610. *Carth.* 163.

Nor uſe the Trade for himſelf. *Per Holt*, *Carth.* 163. *Vide Poſt*, (D. 6.)

[There is no Occaſion to have Indentures of Apprenticeſhip ſtampt according to 8 *Ann. c.* 9. *ſſ.* 32. when the Sum given with the Apprentice is ſo ſmall (as 6 *d.*) that no Coin is ſmall enough to pay the Duty. *Baxter* v. *Faulam*, *P.* 19 *G.* 2. 1 *Wilſ.* 129.]

[*Stat.* 1 *J.* 1. *c.* 22. extends to all Red Leather, and *all Perſons*, and a *Qui tam* Action on it laid in *Middleſex* for an Offence in *Drury-Lane*, alledging that one

one third of Penalty belongs to Dean and Chapter of *Weſtminſter*, is good notwithſtanding the Act extends the Juriſdiction of the Lord Mayor of *London* three Miles round. *Roſſel* v. *Kitchin*, *H.* 31 *G.* 2. 1 *B. M.* 497.]

[A ſingle Act of Selling does not make a Man a Hawker, nor oblige him to have a Licence. *Rex* v. *Little*, *T.* 31 *G.* 2. 1 *B. M.* 609.]

[One Licence is ſufficient for a Perſon who travels with ſeveral Horſes, tho' the Intention of the Legiſlature was evidently otherwiſe; yet by Miſtake the Word *Year* is put for *Horſe*, and the Commiſſioners have always conformed to it. But *Note*, *B. R.* would give no no Opinion thereon. *Rex* v. *Robotham*, *P.* 4 *G.* 3. 3 *B. M.* 1472.]

[The Linen Manufacture of *Scotland* is the Linen Manufacture of *this Kingdom*; therefore, Native of *Scotland*. wholeſale Dealer in *Scotch* Linens, is not obliged to take out a Licence to carry his Linen from Town to Town, and expoſe them to Sale in a Room by Wholeſale only. *Maxwel* v. *Meyer*, *P.* 2 *G.* 3. 3 *B. M.* 1314.]

[A Journeyman is not liable to the Penalty of 5 *El. c.* 4. *Beach* v. *Turner*, *T.* 9 *G.* 3. 4 *B. M.* 2449. Q. Whether the Maſter who employs him is not liable.]

[By 17 *G.* 3. *c.* 33. Dyers in *Middleſex*, *Eſſex*, *Surry*, and *Kent*, may employ Journeymen who have not ſerved Apprenticeſhips.]

[By 17 *G.* 3. *c.* 55. So may all Hatters.]

[By *ſtat.* 18 *G.* 2. *c.* 33. Carts in *London* may be drawn with three Horſes, and the Wheels of ſix Inches broad may be bound with Iron, and the Name of the Owner ſhall be on every Cart, on Pain of 40 *s.* on the Driver.]

[By *ſtat.* 18 *G.* 2. *c.* 36. Cambricks and *French* Lawns are prohibited to be worn, on Pain of 5 *l.* to be levied by Warrant from one Juſtice; ſelling them, the ſame; Wearer diſcovering Seller, diſcharged. They are not to be imported but for Exportation.]

By 21 *G.* 2. *c.* 26. The Penalties on a *Feme-covert* for wearing Cambrick, to be levied on the Huſband.]

[Milliners, *&c.* making up Cambrick to be liable to the Penalties.]

[By *ſtat.* 22 *G.* 2. *c.* 36. Foreign Embroidery, or Gold or Silver Brocade, ſhall not be imported, on Pain of Forfeiture, and 100 *l.* Penalty for every Piece or Parcel.]

[Seller, or Taylor or Dealer, in whoſe Cuſtody is found foreign Embroidery, Gold or Silver Thread, Lace, Fringe, Brocade, or Work thereof, or of Gold or Silver Wire or Blate, forfeit 100 *l.*]

[By 23 *G.* 2. *c.* 21. Foreign Candles, Soap and Starch ſhall be imported in Packages not leſs than 224 Pound.]

[By *ſtat.* 3 *G.* 3. *c.* 21. Silk Ribbons, Laces or Girdles imported, are forfeited, with Penalty on Importer of 100 *l*; on Aſſiſtant, Seller or Concealer 50 *l.*

[By *ſtat.* 5 *G.* 3. *c.* 48. Silk Stockings, Mitts and Gloves imported, are forfeited, with Penalty of 200 *l.*]

[By *ſtat.* 6 *G.* 3. *c.* 19. Leather Gloves and Mitts imported, are forfeited, with 200 *l.* Penalty.]

[By *ſtat.* 7 *G.* 3. *c.* 47. Foreign Silk or Thread Lace muſt not be worn.]

[By *ſtat.* 12 *G.* 3. *c.* 50. Oak Bark ſhall not be imported when the Price is under 10 *l.* a Load of Hatch-bark, or 2 *l.* 10 *s.* in the Rinds; when above it may be imported paying 1 *d. per Cwt.* Duty.]

[By *ſtat.* 12 *G.* 3. *c.* 54. The *Eaſt-India Company* are reſtrained from Building Ships till their Shipping is reduced to 45,000 Ton.]

[By *ſtat.* 12 *G.* 3. *c.* 55. Prohibited Goods ſhall not be exported from *Ireland* to *Britain*.]

(D. 6) Who not.

But the *St. Eliz.* 4. does not extend to Employments which do not require Skill: As, to a Pippin-monger, or Coſter-monger. *R.* 2 *Bul.* 190. 1 *Rol.* 10. *Dub. Sal.* 611. 1 *Vent.* 326, 346. 2 *Lev.* 206.

Or a Hemp-dreſſer, Wool-comber. *R. Cro. Car.* 499. *Sal.* 611.

Gardener. 1 *Vent.* 326. 2 *Bul.* 191.

So

So he is not within the Statute, if he ſerved ſeven Years as an Apprentice; tho' never bound by Indenture. *Sal.* 613.

Or ſerved ſeven Years, out of the Kingdom, if bound by Indenture. *R.* 1 *Sal.* 67.

If a Wife has aſſiſted her Huſband in his Trade ſeven Years, ſhe may uſe it after his Death. *Sho.* 242.

[If any Man, as a Maſter, has exerciſed a Trade without Interruption for ſeven Years, he is not liable to be ſued on 5 *Eliz. c.* 4. *Per all the Judges. French* v. *Adams, T.* 3 *G.* 3. 2 *Wilſ.* 168.]

[Nor for exerciſing as many Trades as he has worked ſeven Years at. *Ibid.*]

If the Maſter, to whom the Apprentice ſerved, uſed ſuch Trade, tho' another Trade was his Principal: As, if a Mercer ſells Hats, his Apprentice ſhall uſe the Trade of an Hatter. *Sho.* 242.

So, it does not extend to him, who uſes a Trade for his private Family: As, if he has in his Houſe any one who acts as a Brewer, Baker, Taylor, *&c.* for his private Uſe. *R.* 8 *Co.* 129. *b. R.* 11 *Co.* 54. *a. Cro. Car.* 499. *Acc. Carth.* 163.

So the Statute does not abrogate the particular Cuſtom of a Town, *&c.* As, that the Widow of a Trader ſhall uſe the Trade of her Husband, *&c. Carth.* 163.

[If a Man who has not ſerved an Apprenticeſhip (to a Brewer) is Partner with one who has, and advances Money to him to become Partner in the Trade, and to ſtand to Profit and Loſs, but is not to intermeddle, nor doth intermeddle in the working Part of the Trade, he is not within 5 *Eliz. c.* 4. *Rex* v. *Chaſe, M.* 30 *G.* 2. 2 *Wilſ.* 40. 1 *B. M.* 2.]

(D. 7.) Remedy a. gainſt the Offender.

By the *St.* 5 *Eliz.* 4. All Penalties in that Act not otherwiſe diſpoſed of, ſhall be, one Moiety to the King, the other to ſuch as will ſue for the ſame in the Queen's Courts of Record, or before Juſtices of *Oyer* and *Terminer*, or any other Juſtice, by Action of Debt, Information, or otherwiſe: And the ſaid Juſtices or any two (one being of the *Quorum*) and Mayors, *&c.* of Corporations may hear and determine all Offences againſt the ſaid Statute on an Indictment in the Seſſions of the Peace, or an Information, *&c.*

Provided, all Amerciaments, Fines, Forfeitures for any Offences in this Act, within a City or Corporation, ſhall be levied, *&c.* by ſuch Perſon within the City, *&c.* as ſhall be appointed by the Mayor, *&c.* to the Uſe of the City, *&c.* in ſuch Manner as any other Amerciaments, *&c.* have been uſed to be levied, *&c.* by Reaſon of any Grant or Charter, *&c.* to the ſame City, *&c.*

And therefore, an Indictment lies for uſing a Trade contrary to the Statute.

Or Debt, or Information *qui tam, &c.*

And an Indictment, or Information lies in the Seſſions of the City, Borough, *&c.* as well as of the County; tho' by the *St.* 31 *El.* 5. Suits for uſing an Art wherein not brought up, *&c.* ſhall be in the Quarter-Seſſions of the Peace, or Aſſiſes of the County where the Offence committed, or Leet, *&c.* for it is added, *and not elſewhere out of the ſaid County. R.* 2 *Keb.* 403. *R. Sal.* 370. *Mod. Ca.* 220.

And an Information *qui tam, &c.* lies, tho' the Forfeiture be given to the Corporation; for that only ſhall be intended of the King's Part. *R. Cro. Car.* 316.

But Debt does not lie upon this Statute in the Courts of *Weſtminſter*, unleſs the Offence was in *Middleſex. R. Hob.* 184. But *Mo.* 886. reports the ſame Caſe *cont. Semb. acc. Sti.* 223. *Vide Action upon Statute*, (D.)

So the Indictment, *&c.* is not ſufficient, if it does not alledge, that the Trade was uſed, 5 *El. R. Pal.* 528. *Sal.* 611. *Semb. cont.* for the Court may take Notice, that it is an antient Trade. 2 *Rol.* 376.

If it be a Trade named in the *St.* 5 *El.* 4. it ſhall be intended then uſed, tho' not ſo alledged. 4 *Mod.* 145, 6.

Who may take or ſhall be bound Apprentices, and how puniſhed or diſcharged, *Vide in Juſtices of Peace*, (B. 53, &c.)

Vide more concerning *Trade* in *Action on the Case for Deceipt*, (A. 7.)—*By-Law*, (B. 3.—C. 3.)—*London*, (N. 6, &c.)—*Merchant.*—*Navigation*, (I. 1, &c.)—*Prærogative*, (D. 38.)—*Scotland*, (D. 7.)

TRANSPOSITION OF WORDS.

Vide Parols, (A. 21.)

TRAVERSE.

Vide Indictment, (L.)—*Justices of Peace*, (D. 13.)—*Pleader*, (G. 1, &c. 17, &c.)—*Prærogative*, (D. 83, 84.)—*Sewers*, (G.)

TREASON.

Vide Admiralty, (E. 2.)—*Copyhold*, (M. 1.)—*Forfeiture*, (B. 1, 2, 3.)—*Justices*, (K. 1, &c.—L. 1, &c.—N. 1.—X. 1.—3 Y. 4.)—*Justices of Peace*, (B. 2.)—*Parliament*, L. 28.)—*Testmoigne*, (A. 3.)—*Utlagary*, (D. 1.)

TREASURE TROVE.

Vide Officer, (G. 9.)—*Waife*, (G.)

TREASURER.

Lord High Treasurer.

Vide Courts, (D. 8.)——*Justices*, (K. 8.——*Officer*, (E. 1.)

Treasurer of a County.

Vide Justices of Peace, (B. 70.)

TREES.

Vide Biens, (H.)——*Copyhold*, (K. 7.)

TRESPASS.

(A) Tresпass; What shall be.

(A. 1.) To Goods and Chattels.

TRESPASS is a Wrong done to the Person, to the Goods and Chattels or to the Lands and Tenements of another Man.

Tresпass to the Person may be by Menace, Assault, Battery or *Mayhem*. *Of which Vide in Battery*, (A. B. C. D. E.)

Or by false Imprisonment. *Of which Vide in Imprisonment*, (L. 2.)

It will be a Treſpaſs done to another, if a Man wrongfully takes the Goods and Chattels of another: As, if he takes his Horſe, Ox, or other Cattle, or live Chattel. *F. N. B.* 87. *M.*

[Treſpaſs lies for aſſaulting, beating and wounding Plaintiff's Mare. *Barnes* 452.]

So, if he takes his Furniture, or other dead Chattel.

As it lies *de Navi abductâ.* *F. N. B.* 87. *I.*

So, if he takes Cattle or Goods that belong or have Relation to another Thing: As, it lies *de Pullis Eſpervor' ſuorum in tali Boſco ſuo nidifican'.* *F. N. B.* 86. *L.*

Of Doves taken out of his Dove-houſe. *F. N. B.* 88. *I.*

De Leporibus, Phaſianis, Perdicibus, Cuniculis, &c. in Warrennâ vel Clauſo ſuo captis et aſportatis. *F. N. B.* 86. *M.* 87. *A.*

De Feris in Parco ſuo captis et aſportatis. *F. N. B.* 87. *A.* But this ſeems to be by the *St. W.* 1. 20. 2 *Rol.* 550. *l.* 46.

Of Fiſh taken. 5 *Co.* 34. *a. Playter.*

So it lies *de Uxore abductâ cum Bonis Viri.* *F. N. B.* 89. *O.*

Of a Servant taken away, *cum Bonis Magiſtri.* 2 *Rol.* 551. *l.* 34.

So it lies of Charters taken, tho' they concern the Freehold or Inheritance.

Of a Bond, or other Writing taken. 2 *Rol.* 557. *l.* 40.

So it lies of 100 Shillings of his Money *in Pecunia numerata.* *F. N. B.* 87. *M.*

Of Timber. *F. N. B.* 87. *D.*

So, *de Catallis Felon'* taken by the Sheriff. *F. N. B.* 91. *F.*

Of Goods wrecked taken before Seiſure. *F. N. B.* 91. *D.*

Of Goods waived or ſtrayed, before Seiſure. *F. N. B.* 91. *B.*

So Treſpaſs lies for an unlawful Diſtreſs of Goods. *F. N. B.* 90. *B.*

For Goods taken till he make Fine, Releaſe, *&c.* *F. N. B.* 87. *C.*

For Goods deſtroyed; As, a Mill-Stone broken. *F. N. B.* 88. *L.*

Sheep driven by a Dog, *ita quod deteriorat' ſunt.* *F. N. B.* 89. *L.*

Hogs driven *ita quod interierunt.* *F. N. B.* 89. *L.*

Of Hay or other Goods burnt. *F. N. B.* 88. *N.*

Veſtment ſpoiled by throwing Wine upon it. *R. Noy* 48.

(A. 2.) To Lands and Tenements.

It will be a Treſpaſs, if a Man wrongfully enters the Houſe, Lands, or Tenements of another without his Conſent: And therefore Treſpaſs lies *de Domo ſuâ fractâ.* *F. N. B.* 87. *D.*

[For entering *Meſſuagium ſive Tenementum.* *Vide* v. *Burton,* *H.* 4 *G.* 2. *Str.* 891.]

De Clauſo ſuo fracto. *F. N. B.* 88. *K.* 91. *I.*

So a Treſpaſs may be to Lands or Tenements by Entry into his Poſſeſſion. *F. N. B.* 92. *A. B.* 2 *Rol.* 555. *X.*

By treading down, ſpoiling, eating, *&c.* his Hay or Corn. *F. N. B.* 87. *G.* 88. *K.*

By cutting down Trees, *&c.* *F. N. B.* 87. *G.*

By Hunting in his Cloſe. *F. N. B.* 87. *A.*

By breaking Ditches or Hedges. *F. N. B.* 90. *K.*

By throwing down, or diſturbing the ſetting up of, his Fold. *F. N. B.* 91. *H.*

By breaking up a Pond. *F. N. B.* 87. *L.*

So, if a Man enters and does Damage to another, tho' he does not keep the Poſſeſſion: As Treſpaſs lies *quare Domum vel Clauſum fregit.*

So Treſpaſs lies for a Wrong to Lands contrary to a Truſt repoſed in him: As, if a Leſſee at Will cuts down Timber, or commits voluntary Waſt. *Co. L.* 57. *a. R. Sav.* 84.

So Treſpaſs lies for a Wrong to his Liberty or Privilege in Land: As *Quare Warrennam ipſius A. intravit, & ſine Licentiâ fugavit, et Lepores, Cuniculos, Phaſianos, ſeu Perdices cepit et aſportavit.* *F. N. B.* 86. *M.*

Quod

Quod ſeparalem vel liberam Piſcariam ſuam fregit, et piſcatus eſt, &c. R. *Skin.* 342. 4 *Mod.* 186. *F. N. B.* 87. *G. Vide Piſchary*, (A.)

[If a Perſon keeps Goods diſtrained in the Houſe longer than the Time directed, he is a Treſpaſſer for the Reſt of the Time. *Griffin* v. *Scott*, *M.* 13 G. *Str.* 717. *Ld. Raym.* 1424.]

(A. 3.) General Wrong.

So Treſpaſs lies for a general Wrong to another: As, if a Man takes the Servant of another out of his Service, and keeps him. *R.* 2 *Rol.* 556. *l.* 15. *F. N. B.* 91. *I.*

If *A.* reſcues a Man out of the Hands of an Officer, who arreſted him for me, for he was my Servant for ſuch Purpoſe. *R.* 2 *Rol.* 556. *l.* 25. *Hob.* 180.

If he builds a Tolbooth upon my Land, without ſaying, *Clauſum fregit*. *R.* 2 *Cro.* 122.

So, if a Miller takes Toll of him, who ought to be free of Toll; for it is *tantamount* to having taken his Corn. 2 *Rol.* 556. *l.* 10.

If he beats the Servant of him, who ought to have Toll, and obſtructs his Taking of Toll. *R.* 2 *Cro.* 122.

So Treſpaſs lies for taking a Son and Heir and marrying him, or a Daughter and Heireſs. *F. N. B.* 90. *H.*

Of a Canon or Monk out of a religious Houſe. *F. N. B.* 90. *G.*

Of a Priſoner taken in War, or of a Villein. *F. N. B.* 88. *A.* 91. *E.*

(B) By whom it lies.

(B. 1.) Treſpaſs *quare Clauſum fregit.*

Vide Poſt, (C. 1.—D.)

TRESPASS, *quare Domum*, or *Clauſum fregit*, lies by him who has the Poſſeſſion of an Eſtate of Freehold or Inheritance, or by Leaſe for Years, or at Will. 2 *Rol.* 551. *l.* 47, 54.

So Tenant at Will may have Treſpaſs againſt him who ouſts him. *Semb.* 2 *Rol.* 551. *l.* 45.

So Tenant by Sufferance may maintain Treſpaſs againſt a Stranger. 2 *Rol.* 551. *l.* 42.

[By the Owner of the Soil, for erecting a Stall in a Market. *Mayor of Northampton* v. *Ward*, *M.* 19 G. 2. *Str.* 1238. *Wilſon* 107.]

So, it lies by him, who has only *Veſturam Terræ*. *Co. L.* 4. *b.* *R. Mo.* 302.

Or *Herbagium Terræ*. *Co. L.* 4. *b.* 2 *Rol.* 549. *l.* 20. *Dy.* 285. *Cont.* 3 *Leo.* 213. *R. acc. Cro. El.* 421.

So by a Leſſee of the Paſture of ſuch a Cloſe. *R.* 2 *Rol.* 549. *l.* 25. *Mo.* 302.

By a Grantee of Underwood, tho' the Soil does not thereby paſs. *R. Cro. El.* 413. *Mo.* 355.

By a Grantee or Leſſee of the King *de Exitibus* of one outlawed. 3 *Leo.* 213. *Mo.* 302.

But a Commoner ſhall not have Treſpaſs *quare Clauſum fregit*. *Cro. El.* 421.

Nor he who has a Warren in Land. *Ibid.*

[But it lies by a Freehold-Tenant in a Manor, for digging Turf in his Turbary, where he has an *excluſive Right* to the Turf, tho' not to the Feeding on it; not if he had only Common of Turbary. *Wilſon* v. *Mackreth*, *H.* 6 G. 3. 3 *B. M.* 1824.]

(B. 2.) What ſhall be a ſufficient Poſſeſſion.

If a Man has Poſſeſſion only as Leſſee for Years, or at Will, it is ſufficient to maintain Treſpaſs againſt a Wrong-Doer. 2 *Rol.* 551. *l.* 47, 54. *Vide ante*, (B. 1.)

So, if a Stranger does a Treſpaſs to a Leſſee at Will, which prejudices the Land, the Leſſor may have Treſpaſs againſt him for the Damage to the Land; for the Poſſeſſion of the Leſſee is his Poſſeſſion. 2 *Rol.* 551. *l.* 49.

So, if a Leſſee at Will commits voluntary Waſt, the Leſſor may maintain Treſpaſs againſt him; for that amounts to a Determination of the Will. *Co. L.* 57. *a.* 1 *Rol.* 860. *l.* 50.

If he dies, and his Heir enters, the Leſſor ſhall have Treſpaſs againſt him before Entry. *Co. L.* 62. *b*. *Cart.* 56, 7.

So a Copyholder who is only Tenant at Will ſhall have Treſpaſs for Trees cut upon his Land. 2 *Rol.* 551. *l.* 50.

So an Intruder upon the King's Poſſeſſion may maintain Treſpaſs. *Al.* 7.

So a Diſſeiſee ſhall have Treſpaſs againſt a Diſſeiſor, without Re-entry; for the firſt Entry; for the Diſſeiſee was then in Poſſeſſion. 2 *Rol.* 553. *l.* 50. *Co. L.* 257. *a.*

So, if his Eſtate determines, whereby he cannot re-enter: As, if he was Tenant *pur autre Vie*, *&c.* he ſhall have Treſpaſs for the whole Time with a *Continuando* againſt the Diſſeiſor. 2 *Rol.* 550. *l.* 15, 20.

So, if a Diſſeiſee re-enters, he ſhall afterwards have Treſpaſs againſt the Diſſeiſor with a *Continuando* for the whole Time of his Poſſeſſion. 2 *Rol.* 550. *l.* 10. 554. *l.* 35. *Co. L.* 257. *a.*

Or againſt a Stranger for a Treſpaſs done during the Diſſeiſin; for by Re-entry he reveſts the Poſſeſſion in himſelf *ab Initio*. 2 *Rol.* 554. *l.* 39.

So againſt a Leſſee, Donee, or Feoffee of the Diſſeiſor. R. 2 *Rol.* 554. *l.* 45. *Cont.* 11 *Co.* 51. *R. Mo.* 461.

If a Man ſells his Land, he ſhall have Treſpaſs for a Wrong done before. 2 *Rol.* 569. *l.* 20.

(B. 3.) What not.

But a Plaintiff cannot maintain Treſpaſs *quare Clauſum fregit*, if he has not actual Poſſeſſion, tho' he has the Freehold in Law: As, an Heir ſhall not have Treſpaſs againſt an Abator. 2 *Rol.* 553. *l.* 45.

If a Wife, Tenant for Life, leaſes for Years and dies, the Reverſioner ſhall not have Treſpaſs againſt the Leſſee before Entry.

Nor the Heir, if an Huſband, ſeiſed in Right of his Wife, leaſes, and then the Wife dies. 2 *Rol.* 552. *l.* 3.

So, if the Heir enters upon an Abator, he ſhall not have Treſpaſs againſt him, for the Wrong before. 2 *Rol.* 554. *l.* 17.

So a Diſſeiſee ſhall not have Treſpaſs againſt a Diſſeiſor for the Continuance in Poſſeſſion, before his Re-entry, except when his Eſtate is determined, ſo that he cannot re-enter. 2 *Rol.* 550. *l.* 7. 553. *l.* 52.

Tho' his Entry be toll'd by his own Act. 2 *Rol.* 550. *l.* 25, 30.

So before Re-entry a Diſſeiſee ſhall not have Treſpaſs againſt *A.* for a Wrong done after the Diſſeiſin. 2 *Rol.* 554. *l.* 2.

So a Bargainee ſhall not have Treſpaſs before Entry, tho' the Poſſeſſion is tranſferred to him by the Statute. *Cart.* 66.

(B. 4.) What ſufficient for Goods.

So not only he, who has the Property, but alſo he, who has the Poſſeſſion of Goods, ſhall maintain Treſpaſs for the Goods: As, if a Man has Cattle to agiſt, he ſhall have Treſpaſs againſt him, who takes them. 2 *Rol.* 551. *l.* 25.

So a Leſſee of Cattle for a Year, for compoſting his Land, ſhall have Treſpaſs againſt a Stranger. 2 *Rol.* 551. *l.* 20.

Or againſt the Leſſor himſelf, if he takes the Cattle within the Year. 2 *Rol.* 551. *l.* 22.

So a Bailee of Goods awarded. 2 *Rol.* 551. *l.* 31.

So a Bailee of Goods pledged to him, if a Stranger takes them. 20 *H.* 7. 1. *a.*

So, if a Stray in the Manor of *B.* be taken within a Year by a Stranger, *B.* ſhall have Treſpaſs. 20 *H.* 7. 1.

So, if a Man takes the Goods of *B.* who afterwards grants them to another, yet *B.* after the Grant ſhall have Treſpaſs for them. 2 *Rol.* 557. *l.* 52.

If a Man ſells Goods at *London* to *A.* in *York*, *A.* ſhall have Treſpaſs before actual Taking; for the Poſſeſſion is immediately in him. *Lat.* 214.

So an Executor ſhall have Treſpaſs for the Goods of his Teſtator, tho' he does not ſay, that they were taken out of his Cuſtody; for the Poſſeſſion upon the Death of his Teſtator is veſted in him. *Per* 2 *J.* 2 *Cro.* 113.

So Treſpaſs lies for Goods taken after Delivery by *Replevin*. 2 *Rol.* 569. *l.* 17.

Or after Retaking by the Owner. 2 *Rol.* 569. *l.* 25.

Or after his Leaſe, or Intereſt, determined. 2 *Rol.* 569. *l.* 30.

If Treſpaſs be done to Goods in the Hands of a Bailee, Treſpaſs lies by the Bailee. 2 *Rol.* 551. *l.* 31.

And alſo by the Bailor, and he, who firſt recovers, ſhall have the Damages. 2 *Rol.* 569. *l.* 22.

So Treſpaſs lies by a Sheriff for taking Goods in his Hands upon Execution before Sale.

Tho' the Taking be by the Defendant himſelf againſt whom the Execution was. *R. Cro. El.* 639.

So Treſpaſs lies for the Maſter of a Ship, who had the Poſſeſſion and was taken for the Voyage, for a Detainer of it. *R.* 1 *Sal.* 11.

So Treſpaſs lies for Goods taken; tho' they are afterwards altered in Form.

(B. 5.) General Treſpaſs, by whom it lies.

So Treſpaſs lies by the Party to whom the Wrong is done.

[So by one hurt by the accidental going off of a Gun. *Underwood* v. *Hewſon*, *T.* 10 *G. Str.* 596.]

Tho' the Damage to him be only by Conſequence: As, it lies by an Huſband alone for the Battery or Threatning of his Wife, *per quod Conſortium amiſit*, or *Negotia infecta remanſ*, &c. *Vide in Battery*, (A.)

[So *A.* throws a Squib among the People at a Market, it lights near *B.* who throws it from him, *C.* does the ſame, and it ſtrikes *D.* and puts out his Eye. *D.* has Treſpaſs *Vi & Armis* againſt *A.* *Blackſtone* J. *contra*, *Scott* v. *Shepherd*. *P.* 13. *G.* 3. 3 *Wilſ.* 403.]

So it lies for the Battery of a Servant, *per quod Servitium amiſit*.

So it lies by a Maſter for the Battery of his Servant, *per quod*, &c. after the Death of the Servant. 2 *Rol.* 568. *l.* 42.

By an Huſband after the Death of his Wife, for taking away his Wife with the Goods of her Huſband. 2 *Rol.* 569. *l.* 12.

Or after a Divorce. 2 *Rol.* 569. *l.* 10.

[By a Woman for an Aſſault by Defendant to whom ſhe was married, if ſhe proves a former Marriage to one alive at the Time of ſecond Marriage. *Weſtbrooke* v. *Strutville*, *H.* 4 *G. Str.* 79.]

So by the *St.* 4 *Ed.* 3. 7. An Executor or Adminiſtrator ſhall have Treſpaſs for a Prejudice to the Property of the Teſtator. *Vide in Adminiſtration*, (B. 13.)

And by the *St.* 25 *Ed.* 3. 5. The Executor of an Executor.

But Treſpaſs does not lie for a Battery, &c. to the Perſon of a Teſtator, by his Executor or Adminiſtrator. *Vide Adminiſtration*, (B. 13.)

Nor

Nor by an Husband after the Death of his Wife, for a Battery to the Wife; for she must join. 2 *Rol.* 568. *l.* 50.

Nor by a Father for the Battery of his Son. *Cro. El.* 55. *R. Ray.* 259. *Mont. & Atkins cont.*

Or the Imprisonment of a Son or Daughter. *R. Cro. El.* 770.

Nor for taking away any Son or Daughter, who is not an Heir. *R. Cro. El.* 770. *Vide in Gardian*, (H. 5.)

So if a Wrong be done to Several at the same Time, Trespass lies for Each severally, for the Wrong to him; for Trespass is several in it's Nature. 3 *Lev.* 354.

(C) Against whom it lies.

(C. 1.) Trespass *Quare Clausum fregit.*

TRESPASS lies against him, who does the Trespass, and all aiding, *&c.* for there is no Accessary, but all are Principals in Trespass.

So Trespass lies against each severally, where many do a Trespass; for it is joint and several in it's Nature.

So against *A. simul cum diversis aliis ignotiis. R.* 1 *Leo.* 41.

Or against *A. simul cum B. & C. R. cont.* by Common Law; but it shall be aided as Form after a Verdict. 1 *Leo.* 411. 3 *Leo.* 77.

So against all, who procure or command it. 4 *Inst.* 317.

Or against him, who afterwards assents to a Trespass done for his Use or Benefit, tho' not privy at the Time of doing it. 4 *Inst.* 317.

So, if he assents to the Act of his Servant in seising Goods, he will be a Trespasser for misusing of the Goods in Seisure, tho' not privy to the Misusage. *R. Lane* 90.

So Trespass, for a Battery in ravishing his Wife, lies against the Wife and others, for she may be assenting. 2 *Rol.* 553. *l.* 35. *Bro. Rape* 2.

So it lies against *A.* who comes in Aid of *B.* tho' he does Nothing. 2 *Rol.* 555. *l.* 7.

Or if he commands *B.* to do, tho' he be not present. 2 *Rol.* 555. *l.* 10.

So Trespass lies against *A.* if his Wife puts his Cattle into the Land of another. 2 *Rol.* 553. *l.* 30.

If the Sheriff, by his Order, takes in Execution the Goods of a Stranger. 2 *Rol.* 553. *l.* 5, 10.

But if a Servant puts the Cattle of his Master, without his Privity, into the Land of another, Trespass lies against the Servant, and not against the Master. 2 *Rol.* 553. *l.* 25.

If the Bailiff of a Franchise takes the Goods of a Stranger in Execution, Trespass lies against him, not against the Sheriff. 2 *Rol.* 552. *l.* 40.

So, if the Bailiff of a Sheriff detains in Custody after a *Supersedeas*, Trespass lies against him, and not against the Sheriff. *R.* 2 *Rol.* 552. *l.* 45.

So, if the Sheriff takes a Furnace, *&c.* fixed to the Freehold, Trespass lies against him, but not against the Party, tho' it is delivered to him. *R.* 2 *Rol.* 556. *l.* 50.

So, if the Sheriff does not return his Writ, *&c.* Trespass lies against him, but not against the Party, or Bailiff. *Vide Return*, (F. 1.)

So, if a Man receives him, who has done a Trespass, knowing him to have done so, he is no Trespassor.

If a Man commits a Trespass by Mistake, or Inadvertency, Trespass lies against him: As, if a Sheriff or Bailiff takes the Goods of one, instead of another. 2 *Rol.* 552. *l.* 17, 22.

Or arrests *A.* instead of *B.* 2 *Rol.* 552. *l.* 25.

Or attaches *A.* by the Goods of *B.* or of his Master. 2 *Rol.* 552. *l.* 20.

Tho'

Tho' it be by the Shewing of the Party to the Suit. 2 *Rol.* 552. *l.* 30.

If an Executor cancels an Obligation of his Teſtatot to *A.* which he finds, ſuppoſing that it is cancelled. *R.* 2 *Rol.* 563. *l.* 45.

If a Man's Cattle eſcape into the Land of another, againſt his Will. 2 *Rol.* 568. *l.* 15.

So, if the Cattle of him in Reverſion after the Death of *Ceſtuy que Vie, &c.* treſpaſs on the Corn of Tenant for Life againſt the Will of the Owner. *R.* 2 *Rol.* 568 *l.* 20.

So Treſpaſs lies againſt *A.* if Cattle in his Cuſtody do a Treſpaſs. 2 *Rol.* 546. *l.* 20.

Or againſt the Owner of the Cattle at Election. 2 *Rol.* 546. *l.* 20.

[Treſpaſs lies againſt Tenant in Poſſeſſion, after Judgment againſt the caſual Ejector for the meſne Profits, from the Time he has Notice of Leſſor's Title, tho' he lets Judgment go by Default, and his Name does not appear in the Record of Judgment againſt caſual Ejector. *R. by all the Judges.* 2 *Wilſ.* 115.]

[If a Man has Apprentices, and puts them in Cuſtody in a Lock-up Houſe, and they complain to Quarter-Seſſions of being ill uſed, *&c.* and their Fear of being ſold to *Guinea,* and the Court diſcharges them, *W.* Lieutenant of Man of Wa agrees with them to ſerve, and gives *A.* Money to keep them that Night, and next Morning ſends Preſs-Gang for them, with a Note to *A.* to deliver them, which he does, taking a Receipt; Treſpaſs *Vi et Armis* lies againſt *W.* for he ſent Force. *Reavely* v. *Mainwaring, H.* 2 *G.* 3. 3 *B. M.* 1306.]

But Treſpaſs does not lie againſt a Man not conſenting or aiding to it: As, if *A.* ſtrikes an Horſe upon which *B.* is riding, whereby he throws down another, Treſpaſs does not lie againſt *B.* *Sal.* 637, 8.

So Treſpaſs does not lie againſt a Lord, becauſe his Diſtreſs is unreaſonable, or carried into another County; for by the *St. Marl.* 4. *Non puniatur per Redemptionem*; but there ſhall be an Action upon that Statute. 2 *Inſt.* 105, 106.

Nor by the Equity of the Statute by a Leſſee for Years againſt the Leſſor. 20 *Ed.* 4. 2, 3. *R. Dal.* 3.

Yet it lies, if the Leſſor ſpoils, or deſtroys the Goods. 20 *Ed.* 4. 3. *a.*

[The Court will not join Declarations againſt ſeparate Perſons, on an Affidavit that the Treſpaſs, if any, was committed by all jointly; for that would deprive the Plaintiff of the Benefit of the Evidence of one againſt the other. *Bayley* v. *Raby, P.* 7 *G. Str.* 420.]

(C. 2.) What Act makes a Man a Treſpaſſer *ab Initio.*

So, if a Man has an Authority or Licence given him by Law, and he abuſes it by Misfeaſance, he ſhall be a Treſpaſſer *ab Initio:* As, if a Man who takes a Diſtreſs, works, or kills it. 8 *Co.* 146. *Vide in Diſtreſs,* (D. 6.)

If a Leſſor, who enters to view if Waſt be done, damages the Houſe. 2 *Rol.* 561. *l.* 27.

Or ſtays there all Night. 2 *Rol.* 561. *l.* 27.

If a Commoner enters to view his Cattle, and cuts down Trees, *&c.* 8 *Co.* 146. *b.*

If a Purveyor, who takes my Cattle for the King's Houſe, ſells them. 2 *Rol.* 561. *l.* 29.

If a Searcher unpacks Stuffs and puts them in the Dirt, whereby they are damaged. *R.* 2 *Rol.* 561. *l.* 30. *Lane* 90.

So, if his Servant, or Aſſiſtant, does it, without his Direction. 2 *Rol.* 563. *l.* 5. *Lane* 90.

If a Man enters a Tavern, and continues there all Night againſt the Will of the Taverner. 2 *Rol.* 561. *l.* 35.

If a Man will impark Goods diſtrained after Amends tendred. 2 *Rol.* 561. *l.* 45. *Semb. cont.* 8 *Co.* 146. *b.*

[If a Man converts a Hog taken Damage-feaſant. *Dye* v. *Leatherdale. M.* 10 *G.* 3. 3 *Wilſ.* 20.]

If the Lord of a Manor works a Stray within the Year. *R.* 2 *Rol.* 562. *l.* 15. *Vide in Waife*, (F.)

Or the Lord of a Fair or Market works an Horſe diſtrained for Toll. 2 *Rol.* 562. *l.* 20

So, if the Bailiffs of a Town who by Cuſtom ſeiſe an Hide, for Non-payment of a Cuſtomary Duty for Hides of all Oxen killed and ſold within the Town, tan it, to prevent Putrefaction. *R.* 2 *Rol.* 562. *l.* 25.

So, if the Sheriff does not return a Writ where he ought, or makes a falſe Return. 2 *Rol.* 563. *l.* 15, 20. *Vide in Retorn*, (F. 1, &c.)

If a Sheriff, or any in his Aid, makes *Replevin* after a Claim of Property notified to him by the Owner. *R. Mod. Ca.* 68, 139.

If an Eſcheator takes the Goods of one outlawed after a Writ *de non moleſtando* ſhewn to him. 3 *H.* 7. 1.

So, if a Man abuſes a Truſt or Confidence repoſed in him, he will be a Treſpaſſer *ab Initio*: As, if Leſſee at Will commits voluntary Waſt, by throwing down an Houſe, cutting down Trees, *&c. Co. L.* 57. *a.* 5 *Co.* 13. *b.* 2 *Rol.* 555. *l. ult. R. Mo.* 248.

If a Shepherd kills Sheep committed to his Care. *Co. L.* 57.

Or for a ſpecial Purpoſe, as to plough, or dung his Land. 2 *Rol.* 556. *l.* 5.

If a Servant, or Aſſiſtant, intruſted to ſell Goods in a Shop, imbezzles them to his own Uſe. *R.* 1 *Leo.* 87. *R. Mo.* 248.

So, if a Man has Colour of an Authority, and afterwards it is vacated and declared to be null, he will be a Treſpaſſer *ab Initio*: As, if a Man obtains Judgment irregularly, and afterwards takes out Execution, the Party (tho' not the Officer) will be a Treſpaſſer, if the Judgment be vacated. *R.* 1 *Lev.* 95. *but Twiſd. dub.*

So, if a Man has an Authority given by Statute, and does not purſue, or abuſes his Power: As, if a Man having Authority by the *St.* 2 *W. & M.* to ſell a Diſtreſs for Rent, if it be not replevied within five Days after Notice, *&c.* ſells it without Notice given. *Adm.* 4 *Mod.* 391.

[If a Man puts Cattle, which he impounded *Damage-feaſant*, into the next Pound which happens to be in another County, it does not make him a Treſpaſſer, but he is ſubject to the Penalty of *ſtat.* 1 & 2. *P. & M. c.* 12. *Gimbart* v. *Pelah*, *T.* 21 *G.* 2. *Str.* 1272.]

[Beaſts dying after put in the Pound, does not make a Man Treſpaſſer *ab Initio*; but Caſe will lie. *Gates* v. *Bayley*, *T.* 6 *G.* 3. 2 *Wilſ.* 313.]

(D) When Treſpaſs does not lie.

BUT a Man ſhall not be charged in Treſpaſs for Goods, which he had by the Delivery of the Party himſelf, except where by a wrongful Act he makes himſelf a Treſpaſſer *ab Initio*: As, if *A* delivers Goods to *B.* for Cuſtody, who afterwards will not redeliver them, Treſpaſs does not lie againſt *B.* 2 *Rol.* 555. *l.* 27, 40.

So, if *A.* permits his Goods to remain with *B.* for his own Uſe, and *B.* delivers them to *C.* to carry to another Place, Treſpaſs does not lie by *A.* againſt *C.* 2 *Rol.* 555. *l.* 35.

Nor for Goods which come to him by Authority in Law. 2 *Rol.* 555. *l.* 43. *Vide Ante*, (C. 2.)

As if *A.* takes Goods by Delivery of the Sheriff upon a *Replevin*. 2 *Rol.* 555. *l.* 45. 565. *l.* 45.

Or takes them upon an Execution, tho' it be not regularly made. 2 *Rol.* 556. *l.* 50.

Upon a Sale. *R.* 2 *Rol.* 556. *l.* 52.

If a Conſtable takes Goods waived for the Uſe of the Owner, tho' he afterwards refuſes to deliver them to him, Treſpaſs does not lie, but *Detinue*. *R.* 2 *Rol.* 555. *l.* 50. 561. *l.* 40.

Nor for Goods which a Man takes only for Security for the Uſe of the Owner: As, if Goods are thrown by Tempeſt into the Sea, and a Stranger takes them, and delivers them to the Servant of the Owner for him. 2 *Rol.* 555. *l.* 47.

So the Maſter of a Barge in a Tempeſt may throw Goods into the Sea, for the Safety of the Paſſengers. *R.* 2 *Rol.* 567. *l.* 5.

Nor for Goods, which a Man has lawfully, tho' the Poſſeſſion of him, from whom he had them, was wrongful: As, if *A.* takes the Horſe of another and ſells him to *B.* Treſpaſs does not lie againſt *B.* 2 *Rol.* 556. *l.* 52.

So, if a Man has Licence or Authority from the Plaintiff himſelf, Treſpaſs does not lie againſt him, tho' he abuſes his Licence by Misfeaſance, *R.* 8 *Co.* 146. *b.*

So, if a Man has Licence or Authority by Law, and afterwards does not do what he ought, Treſpaſs does not lie againſt him; for Nonfeaſance does not make him a Treſpaſſer *ab Initio*. *R.* 8 *Co.* 146. *b.*

As, if, after a Diſtreſs, the Rent or ſufficient Amends are tendred, Treſpaſs does not lie; tho' the Party refuſes Delivery of the Goods diſtrained. 8 *Co.* 146. *b.*

[Nor for taking *exceſſive* Diſtreſs; but a ſpecial Action on the Statute of *Marlbridge*. *Lynne* v. *Moody*, *M.* 3 *G.* 2. *Str.* 851. *Hutchins* v. *Chambers*, *P.* 31 *G.* 2. 1 *B. M.* 579.]

[Unleſs the Diſtreſs is of Gold or Silver, which are of a certain known Value, and even the Meaſure of the Value of other Things. *Moir* v. *Munday*, *H.* 28 *G.* 2. cited in *Hutchins* v. *Chambers*, *ſupra*.]

If a Man comes into a Tavern, or Common Inn, and afterwards refuſes paying for Wine. *R.* 8 *Co.* 146. *b.*

If a Sheriff after an Arreſt refuſes Bail. *R.* 2 *Rol.* 561. *l.* 50. 562. *l.* 10. *Cro. Car.* 196. *Vide Bail.* (K. 6.)

So Treſpaſs *quare Clauſum fregit*, or general Treſpaſs, does not lie, where Damage is done to a Privilege or Liberty, which a Man has in the Soil of another, but he may have an Action upon the Caſe: As, a Commoner ſhall not have Treſpaſs for Damage to the Soil, or Graſs. *Vide in Common*, (H. 1.)

So, if a Man has a free Warren in the Land of *B.* he ſhall not have Treſpaſs, for that *Latibula Liberæ Warrenæ ſuæ proſtravit, &c. per quod Cuniculi, &c. interierunt*. *R.* 2 *Rol.* 550. *l.* 45.

So Treſpaſs does not lie, where the Damage accrues to the Goods by his own Neglect or Default; As, if *A.* gives Licence to *B.* to put Hay, *&c.* upon his Land till it can be ſold, and afterwards leaſes the Land to *C.* Treſpaſs does not lie by *B.* if his Hay be conſumed by the Cattle of *C.* for he ought to ſecure the Hay at his Peril. *R.* 2 *Rol.* 143, 152.

So Treſpaſs does not lie, where the Act is not againſt the Peace, or wrongful, but the Effect of Cunning or Contrivance: As, if a Man procures the Servant of another to go out of his Service and then retains him, but does not take him away. 2 *Rol.* 556. *l.* 17.

So Treſpaſs does not lie againſt a Servant, if he departs out of the Service of his Maſter. 2 *Rol.* 556. *l.* 20.

So Treſpaſs does not lie for a lawful Act, tho' in conſequence Damage is done to another: As, if a Man fixes a Spout to his Houſe, which, upon Rains, throws Water upon the Wall of another; but there may be an Action upon the Caſe. *R.* 2 *Mod. Ca.* 272. [*Reynolds* v. *Clarke*, *T.* 11 *G.* *Str.* 634. 2 *Ld. Raym.* 1399. *Fort.* 212.]

So Treſpaſs does not lie for an Act which is Felony: As, for a Battery, of which the Party dies within a Year. 2 *Rol.* 557. *l.* 5. *Vide Action upon the Caſe*, (B. 5.)

For taking Goods, which was a Robbery; if it appears to be a felonious Taking. *R.* 2 *Rol.* 557. *l.* 10. 1 *Mod.* 283.

If it appears upon Evidence, or by Plea. *Semb.* 2 *Rol.* 557. *l.* 10, 20. *R.* 1 *Mod.* 283.

For

For breaking an Houſe and taking Money, for which he was convicted of *Burglary*. *Dub. Jon.* 148.

But, if a Man proſecutes for the Felony, and the Party is acquitted or burnt in the Hand, he may have Treſpaſs; for he has done what the Law required againſt him for the Felony, and then the Treſpaſs remains. *R.* 2 *Rol.* 557. *l.* 25. *R. Jon.* 150.

So, if the Defendant pleads a Conviction of Felony, it is no Bar; for the Plaintiff was not a Party, and therefore not eſtopped by the Record. *Semb.* 2 *Rol.* 557. *l.* 10.

So, if he pleads a Conviction uncertainly. *R. per* 3 *J. Jon.* 147. *Lat.* 145.

So in Treſpaſs for taking Goods, if it does not appear by the Declaration, *&c.* that the Taking was felonious, the Defendant cannot ſay ſo. *R.* 1 *Mod.* 283.

So Treſpaſs does not lie againſt a Man for taking Goods, which he found. *R.* 2 *Rol.* 555. *l.* 50.

Unleſs, after the Finding, he imbezzles the Goods. *R.* 2 *Rol.* 563. *l.* 45.

For throwing down a Nuſance. 2 *Rol.* 565. *l.* 50.

So Treſpaſs does not lie, if Cattle enter the Cloſe of another for Want of Repair of the Fences. 2 *Rol.* 565. *l.* 30.

If a Man enters Land to drive back his Cattle, eſcaped thither for Want of Fences. 2 *Rol.* 565. *l.* 35.

Or to drive back wild Beaſts, eſcaped for Want of Paling againſt a Foreſt. 2 *Rol.* 565. *l.* 40.

Or to retake his Goods carried thither by the Occupier of the Land. 2 *Rol.* 565. *l.* 54.

But it is not juſtifiable to enter Land with Cattle, becauſe it lies open to the Highway. 2 *Rol.* 565. *l.* 47.

Or to enter to ſearch for Goods ſtolen, without Reaſon of Suſpicion that they are there. *R.* 2 *Rol.* 565. *l.* 15.

Or to enter upon a Common Report that his Trees dug up are carried thither, that not being Felony. *R.* 2 *Rol.* 564. *l.* 30.

Or to enter for retaking Goods, which he, who holds them in Common with me, put there; for tho' a Tenant in Common may retake Goods in Common, when the other takes them, yet he cannot juſtify a Treſpaſs to do it. *R.* 2 *Rol.* 566. *l.* 30.

So, if a Man impriſons me, of his own Wrong, I may juſtify the Breaking of Windows or Doors to get out; for it was his Fault. 2 *Rol.* 566. *l.* 5.

If a Man by Neglect ſuffers his Houſe to be on Fire, I may pull it down for the Safe-guard of mine adjoining. 2 *Rol.* 566. *l.* 3.

If a Man takes an Handful of Grain from my Heap, I may take as much from his Heap. *R.* 2 *Rol.* 566. *l.* 12.

If a Man throws his Grain or Money to my Heap, I may take the Whole. *R.* 2 *Rol.* 566. *l.* 15.

If Cattle or Goods are *Damage-feaſant*, I may drive or remove them out *R.* 2 *Rol.* 566. *l.* 20, 35. *R.* 4 *Co.* 38. *b.*

But I cannot kill or damage them.

Nor can I kill a Tumbler hunting in my Warren. *R.* 2 *Rol.* 567. *l.* 35.

So, if a Man ſells me all his Trees, I ſhall have Liberty to come upon the Land, to cut them down and carry them away, when I pleaſe. *R.* 2 *Rol.* 567. *l.* 40.

So a Grantee of a Water-Pipe, *&c.* ſhall have Liberty to mend it. 2 *Rol.* 567. *l.* 45.

An Executor has Liberty to enter to take the Timber of the Deceaſed. 2 *Rol.* 564. *l.* 25.

A Reverſioner, *&c.* to view Waſt, if he does not break a Door or Window. 2 *Rol.* 568. *l.* 5.

If Cattle, in Paſſage on the Highway, eat Herbs or Corn *raptim et ſparſim* againſt the Will of the Owner, it will excuſe the Treſpaſs. *R.* 2 *Rol.* 556. *l.* 55.

[But if Defendants enter Plaintiff's Close, where there is no Foot-Path, and adjoining to his Paddock, with Guns and Dogs, Dog runs into the Paddock and kills a Deer. Trespass lies, for it cannot be called involuntary. *Beckwith* v. *Shoredike et al.* P. 7 G. 3. 4 *B. M.* 2092.]

But Trespass is not excused on Pretence of Charity: As, if a Mother enters the House of another to visit her sick Daughter there, without asking Leave. *R.* 2 *Rol.* 567. *l.* 15.

Or on Pretence of Sport: As, for the Hunting of a Fox, or Badger. *R.* tho' it be for the publick Good. 2 *Rol.* 558. *B.*

If a Man sets a Falcon at a Pheasant in his own Land, he cannot pursue it into the Warren of another. 2 *Rol.* 567. *l.* 30.

[It does not lie for seizing a House in the *East-Indies*. *Shelling v. Farmer*, *M.* 12 *G. Str.* 646.]

[It lies not for the Father, for assaulting and getting with Child his Daughter, *per quod Servitium, &c.* if she was of Age, and away from her Father's House, in Service; but if she was under Age, and under her Father's Roof, it lies. *Postlethwaite* v. *Parkes*, *P.* 6 *G.* 3. 3 *B. M.* 1878.]

Vide more concerning *Trespass in Action on the Case*, (B. 6.)—*Dismes*, (M. 12.)—*Justices of Peace*, (B. 11.)—*Pleader*, (3 M. 1, &c.)

TRIABLE PLEA.

Vide Pleader, (E. 34.—G. 7.)

TRIABLE ISSUE.

Vide Pleader, (R. 10).

TRIAL.

(A) The several Sorts of Trial.

WHEN Trial shall be by the Country, *Vide in Enquest*, (A. 1, &c.)

The Antiquity, Number, Qualification, Exemption, and Challenge of Jurors. *Vide in Challenge*, (A. 1, &c.)

What Process there shall be against Jurors, *Vide in Enquest*, (C. 1, &c.)

When Trial shall be by Certificate of the Ordinary, Recorder, Marshal, *&c. Vide in Certificate.*

Trial of a Peer shall be by his Peers. Of which *Vide Parliament*, (L. 16, 26.)

Of Peerage, whether he be a Baron or not, shall be tried by the Writ of Summons to Parliament. *Vide in Dignity*, (D.)

Trial of *Antient Demesne* shall be by *Doomsday Book*. *Vide in Antient Demesne*, (F. 7.)

(A. 1.) By Record.

A Matter of Record is of so high a Nature, that it shall be tried only by itself. 9 *Co.* 25. *a.* 31. *a.* 2 *Rol.* 574 *l.* 7.

And therefore, if to a Judgment, Statute, or Recognisance, alledged in Pleading, *Nul tiel Record* be pleaded, it shall be tried by the Record itself. 2 *Rol.* 574. *l.* 17, 50. *Vide in Record.* (B.)

So

So to a Recovery, or Fine. *Pl. Com.* 15. *a.*

So to an Indictment, or Acquittal upon it. 2 *Rol.* 574. *l.* 11.

So, if the Iſſue be, whether the Plaintiff be an *Alien* Enemy, it ſhall be tried by the League, which ought to be upon Record. 9 *Co.* 31. *a.* 2 *Rol.* 575. *l.* 50.

Whether a Protection was allowed in Court. 2 *Rol.* 574. *l.* 15.

Whether the Defendant was committed to Priſon. 2 *Rol.* 574. *l.* 20.

So in an Action for an Eſcape after a *Cepi Corpus* returned, if the Iſſue be, Whether he was in Cuſtody of the Sheriff. 2 *Rol.* 574. *l.* 24.

Whether he was in Execution for ſuch a Cauſe. 2 *Rol.* 574. *l.* 20.

Whether he be rendred in Execution in Diſcharge of his Bail. 2 *Rol.* 576. *l.* 5.

Whether ſuch an One was a Juſtice of Peace. 2 *Rol.* 574. *l.* 30.

Or Sheriff. 2 *Rol.* 575. *l.* 25. 32 *H.* 6. 27.

So, Whether he was Sheriff on ſuch a Day; for the Letters Patent ſhew when he was made Sheriff, and he continues ſo, till diſcharged by Matter of Record: *R.* 2 *Rol.* 575. *l.* 30.

Whether he was a Baron, Earl, *&c.* 2 *Rol.* 575. *l.* 5. *Vide in Dignity*, (D.—F. 1, 2.)

[Whether a Man is an Attorney. *Foſter* v. *Cale*, *H.* 4 *G. Str.* 76.]

What is Matter of Record. *Vide in Record*, (A.)

What will be a Material Variance, what not. *Vide in Record*, (C.)

(B) Trial by the Juſtices.

(B. 1.) By Inſpection.

(B. 1.) When it ſhall be.

IF there be a Queſtion, Whether a Fine, Statute, Recogniſance, or other Matter acknowledged before a Judge of Record, was done by an Infant or not, it ſhall be tried by Inſpection of the Juſtices, for an Act done by a Judge of Record ſhall never be tried by the Country. 9 *Co.* 30. *b.*

And therefore, in Error by an Infant to reverſe a Fine levied during his Nonage, if there be Iſſue upon it, it ſhall be tried by Inſpection. 9 *Co.* 30. *b.* *R.* 2 *Rol.* 572. *l.* 10.

So, in an *Audita Querela* to be relieved againſt a Statute or Recogniſance acknowledged in his Nonage. 9 *Co.* 30. *b.* *R.* 2 *Rol.* 572. *l.* 25. 573. *l.* 50. *Yel.* 88. 3 *Mod.* 229.

So, in Error to reverſe a Recovery againſt him by Default. 2 *Inſt.* 483, 484.

So in an Appeal by an Infant, if there be Iſſue upon the Infancy, it ſhall be tried by Inſpection. 2 *Rol.* 572. *l.* 21.

So in *Account* by or againſt an Infant. 2 *Rol.* 572. *l.* 30.

So if Tenant by *Receipt*, *Aide prier*, or *Vouchee* pray, That the *Parol* may demur for his Nonage, it ſhall be tried by Inſpection. 2 *Rol.* 572. *l.* 12, 32. 9 *Co.* 31. *a.*

If Judgment be for the Infant upon Inſpection in an *Audita Querela*, and afterwards reverſed by Error in *B. R.* and then another *Audita Querela* brought in *B. R.* there muſt be a new Inſpection: for an Inſpection in one Court is not ſufficient for another. *B. Yel.* 88.

So, tho' the new *Audita Querela* be in *C. B.* where the former Inſpection was. *Ibid.*

Yet, if he be of full Age, before the ſecond *Audita Querela*, he may be relieved upon an Allegation of the former Inſpection, and the Judgment for him, and the Reverſal. *R.* 2 *Cro.* 59.

(B. 2.) When not.

But if Nonage be confeſſed, no Inſpection is neceſſary; for the Party has the Effect of the Plea. 2 *Rol.* 572. *l.* 35.

So, if an Infant, after full Age, would avoid an Act done by him for his Nonage, it ſhall be tried by the Country, for Inſpection will be of no Effect:

As, if there be Error to reverſe a Judgment, becauſe that he, being an Infant, appeared by Attorney, it ſhall be tried by the Country, whether he was an Infant. 9 *Co.* 30. *b.* 2 *Rol.* 573. *l.* 15.

Or, to reverſe a common Recovery, ſuffered by him within Age, (admitting it to be Error.) 2 *Rol.* 573. *l.* 45.

So in Account, if the Defendant pleads Infancy at the Time of Bailment, 2 *Rol.* 572. *l.* 40.

So, tho' he be an Infant at the Time of Error ſued; for Judgment ſhall be reverſed, as well when of full Age, as when an Infant. *R.* 2 *Rol.* 573. *l.* 25, 45.

So in all Caſes, where Infancy is triable by Inſpection, if there be a Doubt, the Court may direct a Trial by the Country. 2 *Rol.* 573. *l.* 35.

(B. 3.) How tried.

If a Trial by Inſpection be required, and the Infant is not in Court, a *Venire* ſhall be awarded againſt him: As, if the Voucher of an Infant be counter-pleaded. 2 *Rol.* 573. *l.* 12.

So, if it be prayed in Aid of an Infant. 9 *Co.* 31. *a.*

But, if he pleads Infancy by his Guardian, the Guardian ſhall be commanded to have the Infant in Court at the Day to be inſpected, without a *Venire facias.* 2 *Rol.* 573. *l.* 10.

If the Court be in Doubt upon Inſpection, they may inform themſelves by Proofs: As, by Examination of the Mother, Godfather, *&c.* 2 *Rol.* 573. *l.* 5. *Pal.* 326.

So they may examine the Infant himſelf upon a *Voyer dire.* 2 *Rol.* 573. *l.* 3.

(B. 4.) By Examination without Inſpection.

So the Cuſtoms and Uſages of a Court ſhall be tried by the Juſtices of the ſame Court. 9 *Co.* 30. *b.*

So, if *A.* makes an Attorney in Court, and the Defendant pleads that the Plaintiff is dead, and *A.* ſays that he is the Plaintiff, the Juſtices are to adjudge whether *A.* who now appears be the ſame Perſon who made the Attorney. 9 *Co.* 30. *b.*

(B. 5.) By Witneſſes.

So in Dower, if the Tenant pleads, that the Huſband is alive, it ſhall be tried by Witneſſes. 9 *Co.* 30. *b.* *Vide in Pleader,* (2 Y. 9.)

So in an Appeal by a Woman of the Death of her Huſband, if the Defendant pleads, that the Huſband is alive. 9 *Co.* 30. *b.*

In an Aſſiſe by *A.* who was the Wife of *B.* 9 *Co.* 30. *b.*

So, whether ſuch and ſuch be Summoners or Viewers, ſhall be tried by the Court by Witneſſes. 9 *Co.* 31. *a.*

So, whether a Summons be well made. *Cro. El.* 42.

And the Court themſelves ought to make the Examination, not the Clerks. *Cro. El.* 43.

Where the Trial is by Witneſſes, there muſt be two Witneſſes at leaſt. *Pl. Com.* 12. *a.*

(C) Trial at Bar; When it ſhall be.

TRIAL ſhall be at Bar, or at *Niſi prius.*

If a Juſtice of the one Bench or the other be concerned, the Trial ſhall be at Bar upon Motion without *Affidavit.* 1 *Sid.* 407.

So, if a Maſter in *Chancery.* *Ibid.*

[Granted on Conſideration of the Conſequence of Conviction on an Information. (*Scil.* Forfeiture the Auditorſhip of Impreſts.) *Rex* v. *Foley & Harley,* E. 3 *G. Str.* 52.]

[But not in an iſſuable Term. *Per Parker* C. J. *Ibid.*

[Where Plaintiff makes but one Title, he ſhall have it, on Affidavit of Value, tho' ſeveral Defendants have but ſmall Intereſt. *Preſton* v. *Lingen*, *M.* 8 *G. Str.* 479.]

[Granted on an Information againſt a Juſtice of Peace for Neglect and Abuſe in relation to Deer-ſtealers; on Affidavit of his Fortune, and the great Number of Witneſſes. *Rex* v. *Johnſon*, *M.* 12 *G. N. B.* In Information exhibited by Attorney-General, he has a Right to bring it to the Bar. *Str.* 644.]

[No Trial at Bar granted before Iſſue joined. *Caſe of Chriſt Church*, *P.* 12 *G. Str.* 696.]

[It ſhall not be granted on Motion, on an Information for a Miſdemeanor carried on by a private Proſecutor. *Rex* v. *Hales*, *M.* 2 *G.* 2. *Str.* 816.]

[But on an Authority from the King to proſecute, it ſhall be granted as of Right to the King in his own Cauſe. *Ibid.*]

[There can be no Trial at Bar in *London*, for the Citizens are not to be brought out of the City. *Caſtell* v. *Bambridge*, *H.* 3 *G.* 2. *Str.* 854.]

[Trial at Bar ought not to be granted, unleſs the Caſe is of Difficulty, or requires great Examination, and is alſo of conſiderable Value. *Crofts* v. *Wills*, *T.* 11 & 12 *G.* 2. *Andr.* 271.]

[And the Court will refuſe it, tho' the Eſtate is of great Value, and the Matter intricate, if many Witneſſes are old and infirm, and the Place remote. *Martin* v. *Sparrow*, *T.* 11 & 12 *G.* 2. *Andr.* 273. *Barnes* 447.]

[Granted in Action for criminal Converſation, laid at 50,000*l.* Damages, on Defendant's Affidavit of having twenty Witneſſes, conſenting to Plaintiff's examining a Witneſs before a Judge, and waiving Privilege of Parliament. *Barnes* 438.]

[It may be moved for in Ejectment, before Appearance. *Barnes* 455.]

When and how at *Niſi prius*, *Vide Enqueſt*, (A. 1.—C. 1, &c.)

Vide more concerning *Trial in Admiralty*, (E. 5, 6.)—*Baſtard*, (D. 2.)—*Battell.*—*Chancery*, (X.—4 V.)—*Copyhold*, (R. 17.)—*County*, (C. 11.)—*Dett*, (G. 14.)—*Information*, (D. 7.)—*Juſtices*, (T. 3.—W. 1, &c.)—*Prohibition*, (F. 14.)—*Wales*, (D.)

Trial per Medietatem Linguæ.

Vide Alien, (C. 8.)

TROVER.

Vide Action upon the Caſe upon Trover.—*Pleader*, (2 I.)

TROY WEIGHT.

Vide Leet, (L. 6.)—*Juſtices of Peace*, (B. 90.)

TRUCE.

Vide Admiralty, (E. 8.)

TRUST.

Vide Action on the Caſe for Deceipt, (A. 5.—E. 2, 3.)——*For Negligence*, (A. 1.)—*Adminiſtration*, (C. 4.)——*Chancery*, (2 M. 9.—3 R. 3.—4 W. 1, &c.)

TRUS-

TRUSTEE.

Vide Chancery, (4 W. 7, &c.)

TUMBREL.

(A) Tumbrel, &c. Who shall have them.

Vide Leet, (K.)

THE Tumbrel, or *Trebutchet* is an Engine for the Punishment of Women, that scold, or are unquiet, now called a *Cucking-stool*. *Nom. Verb. Cucking-stool. Lamb. l.* 1. *c.* 12.

Other Instruments of Punishment or Correction are *Furcæ*, or Gallows. *Fl. l.* 2. *c.* 12. *S.* 19.

The Pillory and Stocks. *Fl. l.* 2. *c.* 12. *S.* 19. *Kit.* 13. *a.*

These Instruments of Correction none can set up without proper Warrant.

And, if the Lord of a Liberty set them up without Warrant, he shall lose his Franchise or Liberty. *Fl. l.* 2. *c.* 12. *fo.* 75. 2 *Rol.* 203. *l.* 10.

And a Man may have a Pillory, Tumbrel, and *Furcas*, &c. by Grant or Prescription. 2 *Rol.* 203. *l.* 10.

So every Lord of a Leet ought to have them. *Kit.* 13. *a. Cro. El.* 698. *Fl. l.* 2. *c.* 12. *S.* 19. *Vide in Leet*, (K.)

And the Neglect to have them is inquirable in the Leet. *Kit.* 13. *a. Fl. l.* 2. *c.* 12. *S.* 19.

And for Default the Liberty may be seised. *Fl. l.* 2. *c.* 12. *S.* 19. *Agr. Mo.* 574. *Cro. El.* 698.

Or the Lord of the Liberty shall be fined to the King for a Neglect in his Time. *Per Scrope, Kel.* 149. *b.*

(B) Pillory.

[THE Head and Hands of the Offender ought to be put *in and through* the Holes in the Pillory, and so continue during the whole Time; if this is omitted, it is a Contempt, and the Court will punish the Under-sheriff by Fine and Imprisonment. *Rex* v. *Beardmore*, *T.* 32 & 33 *G.* 2. 2 *B. M.* 792.]

The Pillory is the usual Punishment of any convicted of an infamous Crime; As, Perjury, Forgery.

So it was inflicted for false Rates by a Publick Assessor. *Mod. Ca.* 306.

So for a Libel on a Magistrate, or the Government. *Cro. Car.* 175.

A Pillory and Tumbrel, which are infamous, ought not to be used without good Warrant. 3 *Inst.* 219.

By the *Stat.* 51 *H.* 3. *St.* 6. A Pillory of convenient Strength shall be in every Liberty.

And by the *St.* 31 *Ed.* 1. *de Pistoribus*, The Pillory ought to be of convenient Strength, that Execution may be done without Peril to the Body of the Offender.

By the *St.* 51 *H.* 3. *St.* 6. *Ass. Pan. & Cerv.* If a Baker offend, in not observing the Assise, often, *viz.* above three Times, he shall be set on the Pillory without Redemption.

So by the same Statute, If a Brewer break the Assise outrageously, or often, he shall be adjudged to the Tumbrel, or other Correction.

And by the *St.* 31 *Ed.* 1. *de Pist.* If a Brewer exceed the Assise, for the 4th Offence he shall be set on the Pillory without Redemption.

By the *St.* 31 *Ed.* 1. *de Piſt.* If a Butcher ſells Swine's Fleſh meazled, or Fleſh dead of Murrain, for the 2d Offence he ſhall be ſet on the Pillory.

By the *St.* 31 *Ed.* 1. *de Piſt.* If any ſell deceitful Oatmeal, for the third Offence he ſhall be ſet on the Pillory.

By the *St.* 31 *Ed.* 1. A Foreſtaller for the 2d Offence ſhall be adjudged to the Pillory. And by the *St.* 5 *Ed.* 6. 14. Foreſtaller, Regrator, and Engroſſer, for the 3d Offence ſhall be adjudged to the Pillory.

By the *St.* 19 *H.* 7. 6. He, who ſells Pewter or Braſs by a deceitful Beam or Weights, ſhall forfeit 20*s.* and if inſolvent ſhall be ſet in the Pillory.

By the *St.* 11 *H.* 7. 4. He who ſells by falſe Weights for the 3d Offence ſhall forfeit 20*s.* and ſhall be ſet in the Pillory.

By the *St.* 33 *H.* 8. 1. Any convicted of getting Money or other Things by counterfeit Tokens or Letters ſhall be impriſoned, pilloried, or otherwiſe puniſhed, as the Juſtices think meet.

By the *St.* 2 *Ed.* 6. 15. Artificers, *&c.* who conſpire to enhance Prices, for the 2d Offence forfeit 20*l.* and if they do not pay it in ſix Days, ſhall be put in the Pillory.

By the *St.* 5 *Ed.* 6. 6. Counterfeiters of Seals to Cloths ſhall be ſet in the Pillory for the 2d Offence.

By the *St.* 7 *Ed.* 6. 7. Cutter or Marker of Fuel falſely, if inſolvent, ſhall be ſet in the Pillory.

By the *St.* 5 *El.* 9. Convict of Perjury ſhall be in the Pillory, *&c.*

By the *St.* 5 *El.* 14. Convict of Forgery ſhall be in the Pillory, *&c.*

By the *St.* 5 *El.* 16. Convict of Sorcery, *&c.* ſhall ſtand in the Pillory ſix Hours every Quarter.

By the *St.* 18 *El.* 5. An Informer, who compounds an Offence without the Aſſent of the Court, ſhall ſtand in the Pillory.

(C) Whipping.

A Perſon convicted of *Petit Larceny* ſhall be whipped.

But Whipping ought not to be inflicted without a proper Cauſe.

And therefore, if a Man in *England* inflicts Whipping upon his Slave brought from *Ruſſia*, without Cauſe, it ſeems unlawful. 2 *Ruſh.* 468.

And by Uſage in the *Star-Chamber*, a Gentleman ought not to be whipped. 2 *Ruſh.* 468.

TURBARY.

Vide Common, (A.)

TURN OF A LIVING.

Vide Eſgliſe, (H. 3, 4.)

TURN OF THE SHERIFF.

Vide Leet, (A.)

VACATION.

Vide Temps, (C. 1, &c.)

VAGABONDS or VAGRANTS.

Vide Juſtices of Peace, (B. 76, &c.)

VALORE MARITAGII.

Vide Gardian, (H. 7.)

VALUE.

Vide Juſtices, (O. 3. 8.)—*Money*, (B. 4.)—*Waſt*, (E. 1.)

VARIANCE.

Vide Abatement, (G. 8.—H. 7.)—*Amendment*, D. 7, 8.—V. 3.)—*Bail*, (R. 7.)—*Obligation*, (B. 4.)—*Pleader*, (C. 14, 15.)—S. 24, 30.—*Record*, (C. D. F.)

VENDITIONI EXPONAS.

Vide Execution, (C. 8.)

VENIRE FACIAS.

Vide Enqueſt, (C. 1,) &c.—*Pleader*, (2 S. 12.—3 O. 20.)—*Proceſs*, (D. 8.)

VENTRE INSPICIENDO.

Vide Baſtard, (C.)

VENUE.

Vide Abatement, (H. 13.)—*Action*, (N. 13.)——*Amendment*, (H. 1, &c.)—*Pleader*, (S. 9.)

VERDEROR.

Vide Chaſe, (Q. 2.)

VERDICT.

Vide Abatement, (I. 34.)—*Amendment*, (P.)—*Appeal*, (G. 14.)—*Eſtoppel*, (E. 10.)—*Evidence*, (A. 5.)—*Pleader*, (C. 87.—E. 38.—R. 13.—S. 1, &c.)—*Prærogative*, (D. 76.)

VERT.

Vide Chaſe, (N. 1, &c.)

VESTED REMAINDER.

Vide Eſtate, (B. 17.)

VICAR.

Vide Eccleſiaſtical Perſons, (C. 10, &c.)

VICARAGE.

Vide Eccleſiaſtical Perſons, (C. 10, &c.)

VICTUALS AND VICTUALLERS.

Vide Juſtices of Peace, (B. 32, 87, &c.)

VIDELICET.

Vide Parols, (A. 8.)

VI ET ARMIS.

Vide Action on the Caſe, (C. 3.)—*Pleader*, (3 M. 7.)

VIEW.

(A) When it lies.

IN all Actions Real, where the Tenant does not know the Certainty of the Lands in the Writ, he may demand a View of the Land demanded. *Bl. Nom. Verb. View.*

[There may be a View in Treſpaſs, on Affidavit that it will be better Direction to the Jury than any Evidence. *Ellis* v. *South*, *T.* 8 *G.* 2. *B. R. H.* 156.]

[It is never granted without Affidavit, except on Actions of Waſte. *Barnes* 467.]

[A View is not granted without hearing both Parties, and examining into the Propriety of it, unleſs the Party applying conſents, that if there is no View, or a View

a View by any of the Jurors (tho' not of the firſt twelve,) yet the Trial ſhall proceed, and no Objection be made on Account thereof, or for Want of a proper Return. * 1 *B. M.* 252.]

[On a View, the Shewers may ſhew not only the Place in Queſtion, but alſo the Marks, Boundaries, &c. to enlighten the Viewers; and may ſay to them, "These are the Places to which we ſhall adapt our Evidence at Trial." *Barnes* 458.]

(B) When not.

BUT by the Common Law, View did not lie in Dower *unde nihil habet*. 2 *Inſt.* 481. *R.* 2 *Lev.* 117.

Nor in any Writ of Dower, where the Huſband died ſeiſed. 2 *Inſt.* 481. *Semb.* 2 *Lev.* 117.

Nor by the *St. W.* 2. 48. *In Dote de Tenemento*, which the Huſband aliened to the Tenant or his Anceſtor. 2 *Inſt.* 481.

If Dower be for Rent, of which her Huſband died ſeiſed, or which the Tenant has by the Releaſe of the Husband, the Tenant ſhall not have the View. 2 *Inſt.* 482.

So the Tenant ſhall not have the View, where Dower is demanded of a Thing certain: As, of the *Marſhalſea*. 2 *Rol.* 728. *l.* 25.

Nor, if it be a Demand of Tithes. *R.* 2 *Rol.* 728. *l.* 45.

Yet the Tenant is not ouſted of the View where he or his Anceſtor diſſeiſed the Huſband: for this is not an Alienation. 2 *Inſt.* 481.

Or, if the Husband aliens to a Woman, who afterwards marries the Tenant; for the Alienation was not to the Tenant himſelf. 2 *Inſt.* 481.

After a Verdict in an Aſſiſe, Default of View ſhall not be alledged. *R. Mo.* 68.

Vide more concerning *View* in *Abatement*, (I. 25.)—*Forcible Entry*, (D. 1, 14.)—*Pleader*, (2 Y. 3.—3 O. 21.)

VIEW OF FRANKPLEDGE.

Vide Leet, (A.)

VI LAICA AMOVENDA.

Vide Egliſe, (N. 12.)

VILL.

Vide Abatement, (H. 18.)—*Pariſh*, (C. 1, 2.)

VILLENAGE.

(A) Villenage.

VILLENAGE is a ſervile Tenure, whereby a Man holds Land to render to his Lord *Villein* Service. * *Lit. S.* 172, 174.

As, to carry and recarry the Dung of his Lord out of the City, or out of his Lord's Manor, unto the Land of his Lord, and to ſpread it there, &c. *Lit. S.* 172. And it may be done by a Free Man, or by a Villein. *Co. Lit.* 116. *Vide Homage.*

* By *St.* 12 *Car.* 2. 24. All Tenures are turned into free and common Socage.

(B) Villein.

EVERY *Villein* is ſo by Preſcription, or by his own Confeſſion in a Court of Record. *Lit. S.* 175.

(C) Remedy for a Villein.

(C. 1.) *Nativo habendo.*

IF the Lord claims an Inheritance in his *Villein*, who flies from his Lord againſt his Will, and lives in a Place out of the Manor, to which he is Regardant, the Lord have a *Nativo habendo*. *F. N. B.* 77. *A.*

And upon ſuch Writ directed to the Sheriff he may ſeiſe him, who does not deny himſelf to be a *Villein*. *Ibid.*

(C. 2.) When the Sheriff cannot ſeiſe upon him.

But if the Defendant ſay, That he is a Free Man, the Sheriff cannot ſeiſe him, but the Lord muſt remove the Writ by *Pone* before the Juſtices *in Eire*, or in *C. B.* where he muſt count upon it. *F. N. B.* 77. *C. D.*

So the Sheriff cannot ſeiſe a Villein dwelling in the King's *Antient Demeſne*, for the Writ *de Nativo habendo* ſays, *niſi ſit in Dominico Domini Regis*. *F. N. B.* 77. *E. Co. Lit.* 137. *b.*

So, by the Cuſtom of *London*, if he has dwelt for a Year and a Day within the City. *R. Mo.* 2.

So, if he be profeſſed in Religion, for he is dead *civiliter*. *Lit. S.* 202.

(C. 3.) *Libertate Probandá.*

So upon a *Nativo habendo* delivered to the Sheriff before Removal by *Pone*, the Defendant may ſue a Writ *de Libertate Probandâ*, whereupon the Whole ſhall be removed before the Juſtices *in Eire*. *F. N. B.* 77. *C.*

And after Removal, nothing ſhall be done upon the *Libertate Probandâ*, but the Lord ſhall count upon the *Nativo habendo*. *F. N. B.* 77. *D. G.*

Vide more concerning *Villenage* in *Abatement*, (E. 1.—F. 3.)—*Homage*, (D.)

VISCOUNT.

(A) Sheriff.

(A. 1.) Who may be.

THE Antiquity of the Office of Sheriff, and how conſtituted, *Vide in County*, (B. 1.)

But by the *St. de Linc.* 9 *Ed.* 2. None ſhall be Sheriff unleſs he have ſufficient Land in the ſame County, to anſwer to the King and his People. *Confirmed by the St.* 4 *Ed.* 3. 9. and 5 *Ed.* 3. 4. 14 *Ed.* 3. 7. 13 & 14 *Car.* 2. 21. *S.* 7.

So no Steward or Bailiff to a Great Lord, unleſs out of Service, that he may attend to execute his Office.

So by the *St.* 14 *E.* 3. 7. No Sheriff ſhall continue in Office above a Year. *Confirmed by the St.* 42 *Ed.* 3. 9. *Vide County*, (B. 2.)

So *Temp. R.* 1. it was provided, That a Sheriff ſhould not be a Juſtice within his County. *Mad.* 639.

(A. 2.) How he begins his Office.

The Sheriff, after Nomination to his Office, and before his Patent delivered, must be bound in a Recognisance in the *Exchequer* to make Account and appoint a sufficient Under-sheriff for Execution of Process.

So he must find Surety for performing his Office, if the King pleases. *Mad.* 642.

So he must qualify himself within three Months by taking the *Test*, according to the *Stat.* 25 *Car.* 2. 2.

After such Recognisance given, he must procure, out of *Chancery*, the Patent of Office, the Patent of Assistance, and the Writ for Discharge of the old Sheriff. *Crompt. Off. of Sher.* 202, 203. *Vide County*, (B. 1, &c.)

He must take by Indenture from the old Sheriff all the Prisoners and Writs, *&c.* in his Custody. *Cromp. Off. Sher.* 203. *Vide County*, (B. 3.)

Also, before the Sheriff acts in his Office, he must take an Oath, That he will truly serve the King in the Office of Sheriff, *&c.* truly keep the King's Rights, and all that belongeth to the Crown, *&c.* not respite the King's Debts for Gift or Favour, where it may be done without great Grievance, rightfully treat the People in his Bailiwick, *&c.* truly acquit at the *Exchequer* all those, of whom he shall receive any Thing of the King's Debts, nothing take whereby the King may lose, or his Right be letted, *&c.* truly return and serve the King's Writs, *&c.* take no Bailiffs but such as he will answer for, *&c.* return reasonable Issues, *&c.* make due Pannels, *&c.* hath not, nor will let to Farm, *&c.* his Sheriffwick or any Office belonging to it, truly execute the Laws, and in all Things behave himself for the Honour of the King, and Good of his Subjects, and discharge his Office to the best of his Skill and Power. *Crompt. Off. Sh.* 202. *Vide* for his Oath the *St.* 3 *Geo.* 15. *Vide Mad.* 640. *Vide Serement*, (A.)

[If Sheriff takes Bond of his Bailiff to pay 20 *d.* for every Defendant's Name in every Warrant in mesne Process, it is not letting his Sheriffwick to Farm. *Ballantine* v. *Irwin*, *M.* 4 *G.* 2. *C. B. Fort.* 368.]

If the Sheriff neglects his Oath, he will be in Danger of Perjury, and also of Imprisonment of his Body, and Ransom at the King's Will. *Dy.* 61. *a.*

So, if he refuses the Office, being nominated by the King, an Information lies against him. 2 *Mod.* 300.

Tho' he was excommunicated, whereby he cannot take the *Test* to qualify himself. *R.* 2 *Mod.* 300.

Or was not qualified by taking the Sacrament within a Year preceding. (*Vide* 4 *Mod.* 269. *Salk.* 167. 1 *Ld. Raym.* 29. 2 *Vent.* 248.)

(B) Deputies of a Sheriff.

(B. 1.) Under-Sheriff.

THE Sheriff of antient Time had his Under-Sheriff. *Hob.* 13. He is mentioned in the *St. W.* 1. 15. 2 *Inst.* 191.

And he by the *St.* 27 *El.* 12. must take an Oath, which is now prescribed by the *St.* 3 *G.* 15.

When the Sheriff appoints his Under-Sheriff, he, *ex Consequenti*, gives him Authority to exercise all the ordinary Office of the Sheriff himself: As, to execute Process, *&c.* *R. Hob.* 13.

And therefore, a Bond, or Covenant, that he shall not execute without his Consent, is void. *Ibid.*

But a Sheriff may constitute his Under-Sheriff at his Will, and remove him when he pleases. *Ibid.*

So, tho' he makes him irrevocable, he may remove him at Pleasure; for he is only his Deputy. *Hob.* 13.

So he need not make an Under-Sheriff, for he may exercise the Office himself. *R. Hob.* 13.

If a Sheriff makes an Under-Sheriff, he may take a Bond or Covenant to indemnify him from Eſcapes, &c. *R. Hob.* 14.

But a Sheriff cannot enable his Under-Sheriff to do a Thing which the Sheriff himſelf ought to do in Perſon: As, to execute a Writ of *Waſt*, *Re-diſſeiſin* &c. *Hob.* 13.

[The Sheriff cannot depute two Perſons to take an Inqueſt. *Denny* v. *Trapnell*, *P.* 8 *G.* 3. 2 *Wilſ.* 378.]

So by the *St.* 3 *G.* 15. None ſhall ſell, buy, let, or take to Farm the Office of Under-Sheriff, &c. or other Office belonging to the Office of High-Sheriff, nor contract for the ſame for Money, or other Conſideration, directly or indirectly, &c. on Pain of 500*l.* a Moiety to the King, a Moiety to him who will ſue, &c. Provided the Suit be in two Years.

Provided, nothing in this Act ſhall prevent the Sheriff, Under-Sheriff, &c. from taking the juſt Fees and Perquiſites of his Office, or from accounting for them to the Sheriff, or giving Security to do ſo, or from giving, or taking, or ſecuring a Salary or Recompence to the Under-Sheriff, &c.

(B. 2.) County-Clerk.

So the Sheriff may make a County-Clerk. *Vide in County*, (C. 1.)

(B. 3.) Deputies to the Sheriff for Replevins, &c.

So by the *St.* 1 & 2 *Ph.* & *M.* 12. The Sheriff, at the firſt County Day, or in two Months after he receives his Patent, ſhall appoint and proclaim four Deputies, living twelve Miles diſtant from each other, to make Replevins, &c.

By an Order in the *Exchequer*, all Sheriffs ſhall aſſign their able Attorney and Deputy in that Court, ſitting the Court, to attend the Court, and receive and return all Writs, &c. And every Sheriff, on his giving a Recogniſance, ſhall deliver to the Clerk in the Remembrancer's Office the Name of the Attorney or Deputy aſſigned. *Ord. and Rules in Exch. Rule* 45. *p.* 20.

So by a Rule in *C. B. M.* 1654. The Sheriff ſhall have a Deputy in Court to receive and return Writs, whoſe Name and Place of Abode in *London*, or *Weſtminſter*, ſhall yearly before *Hilary* Term be ſet up in the Clerk of the Warrant's Office. *Mills* 2.

(C) The Authority of a Sheriff.

(C. 1.) Judicial.

THE Authority of a Sheriff is Judicial, or Miniſterial.

The Judicial Authority of a Sheriff conſiſts in holding the County-Court and Torne. *Of which vide County*, (C. 1, &c.)—*Leet*, (A.)

So by the Common Law the Sheriff was Conſervator of the Peace. *Vide in Juſtices of Peace*, (A. 4.)

But now by the *St.* 1 *M. ſeſſ.* 2. *ch.* 8. No Sheriff ſhall exerciſe the Office of a Juſtice of Peace, within his County, during the Time that he acts as Sheriff.

So, in a Writ of Re-diſſeiſin, the Sheriff acts as a Judge, as well as a Miniſter. *Vide in Aſſiſe*, (F. 2.)

So in Inquiry of *Waſt*.

So, in Admeaſurement of Paſture.

When a Sheriff executes his Judicial Authority, he muſt do it in Perſon, and it is not ſufficient by the Under-Sheriff, or other Deputy.

(C. 2.) To ſuppreſs Inſurrection. When he ſhall take the *Poſſe*.

If there be any Rebellion, Inſurrection or Riot, in the County, the Sheriff may take the *Poſſe Comitatûs* for the Suppreſſion of it. *Cromp. Off. Sher.* 209. *a*. 210. *a*.

So,

So, if there be an Invaſion by the King's Enemies.

Or any Affray, unlawful Aſſembly, or Breach of the Peace within his County. (*Vide Cromp. Off. Sher.* 204, 209, 210.)

So, if it is neceſſary for the apprehending of Traitors, Felons, &c. within Franchiſes or without.

So, for the Execution of Judicial Proceſs. *Vide in Reſcous*, (D. 7.)

Or, if he finds Reſiſtance in the Execution of any Proceſs or the King's Writ. *Vide in Retorn*, (D. 6.)

The Sheriff in ſuch Caſes may require the Aid of all Perſons, above fifteen and able, within his County.

So may the Under-Sheriff, or his known Bailiff, having the Sheriff's Warrant.

(C. 3.) When he has no Juriſdiction.

But by the *St. Mag. Chart.* 17. *Nullus Vicecomes, &c. teneat Placita Coronæ noſtræ.*

(C. 4.) Miniſterial.

The Miniſterial Office of Sheriff conſiſts in the Execution and Return of all Writs and Proceſs to him directed. *Dy.* 61. *a. For which Vide Execution*, (G.) —*Proceſs, per Tot'*—*Retorn, per Tot'*.

In Bailment of Priſoners. *De quo Vide in Bail*, (F. 10.—G. 2.)

In making *Replevin*. *De quo Vide in Pleader*, (3 K. 1, &c.) *Replevin*, (D.)

In Election of Knights and Burgeſſes for Parliament, Coroners and Verderors. *For which Vide Parliament*, (D. 4, &c.)—*Officer*, (G. 3.)

In Attendance upon the Judges, Juſtices, &c.

In Proclamation of Statutes.

And in keeping and collecting the Rights and Revenues of the King. *Mad.* 242.

(C. 5.) To collect the Rights of the King.

The Sheriff by his Oath is bound timely to keep the King's Rights, and all that belongs to the Crown, &c. *Vide Ante*, (A. 2.)

And it was his Duty to take Care of the King's Manors, &c. and collect his Revenue. *Mad.* 643.

And therefore, the Sheriff *ex Officio* may ſeiſe, and take to the King's Uſe, the Profits of all Lands within his County, come to the King by Deſcent, Remainder, Reverter or Eſcheat. *Mad.* 242, 634.

Or by Attainder for Treaſon, Petit Treaſon, or Felony.

The Temporalties of a Biſhoprick. *Mad.* 207, &c.

So before the *St.* 12 *Car.* 2. 24. The Lands which he had by Ward, or *Primier Seiſin*.

So, upon Office found, the Sheriff may ſeiſe and take for the King the Profits of the Lands of Aliens, Ideots, or Lunaticks.

Of Lands forfeited to the King for Waſte, or *Ceſſer* for two Years by the King's Tenant.

By Alienation in *Mortmain*, or without Licence.

By a Condition broken, Feoffment by Colluſion, &c.

So, where the King has Year, Day, and Waſt.

Or Seiſure is made for a Contempt.

In all Caſes, where an Office is found before Commiſſioners, and not the Eſcheator, the Sheriff ſhall be charged with the Profits.

But he ſhall be charged only for the annual Value found by the Office.

And, if the Office does not intitle the King to Entry, but only to his Action, the Sheriff ought not to make Seizure without Warrant.

(D) Remedy againſt a Sheriff.

(D. 1.) For Neglect of his Duty.

IF a Sheriff refuſes or neglects to do his Duty, an Action upon the Caſe lies againſt him: As, if he does not return Proceſs returnable, or makes a falſe Return. *Vide Action upon the Caſe for Negligence*, (A. 2.)—*Retorn*, (F. 1.)

So, if by his Conſent, or Neglect, he ſuffers an Eſcape, Debt lies, or an Action upon the Caſe. *Vide Action upon the Caſe for Negligence*, (A. 2.)—*Eſcape*, (B. 1, &c.)—*Pleader*, (2 P. 1.)

And the Court will not direct the Sheriff, upon Motion, what he ought to do. 2 *Mod. Ca.* 315.

Vide Poſt, (F. 2.)

(D. 2.) For Misfeaſance.

So by the *St.* 3 *Geo.* 15. A Sheriff ſhall not omit to tott any Sum received of a Debtor, and anſwer it in his Account: And, if he *nichil* any Money levied or received, *&c.* ſhall forfeit treble Damages to the Party aggrieved, and double the Sum *nichilled*, *&c.* to be decreed by the Court in a Summary Way, *&c.*

By the *St.* 6 *Geo.* 21. *S.* 53. He ſhall not deliver Blank Warrants to Attornies, *&c.* before a Writ comes to him on Pain of 10 *l.*

[If a Bailiff on Warrant on *Fi. fa.* againſt *A.* takes the Goods of *B.* Treſpaſs *Vi & Armis* lies againſt the Sheriff, even tho' he or his Deputy does not recognize the Act. *Saunderſon* v. *Baker*. *T.* 12 *G.* 3. 3 *Wilſ.* 309.]

[The Sheriff is not liable, for ſeizing Goods in Execution after an Act of Bankruptcy committed; but if he ſells them after the Commiſſion iſſues, Trover lies. *Cooper* v. *Chitty*, *M.* 30 *G.* 2. 1 *B. M.* 20.]

(E) What a Sheriff may or may not do.

(E. 1.) In Perſon.

A Sheriff cannot do Execution, where he himſelf is a Party: And therefore, an Extent by him, when he is Conuſee, will be void. *R. Mo.* 547. *Vide Ante*, (C. 1, 3.)

(E. 2.) By his Officers.

A Sheriff may make a Warrant to his Bailiff for Execution of Proceſs, *&c.*

So he may make a Warrant to a ſpecial Bailiff, named to him by the Plaintiff, and take Security for his Indemnity. *R.* 1 *Leo.* 132. *Cro. El.* 271.

But a Special Bailiff need not take the Oath required by the *St.* 27 *Eliz.* 12. *R. Jon.* 250. 2 *Lev.* 151.

Nor any other Bailiff of a Sheriff, who has not the Return of Writs. *Semb. Jon.* 249.

And he ſhall be intended a Special Bailiff, unleſs the Contrary appears. *Semb.* 2 *Lev.* 151.

Yet a Special Bailiff, being allowed by the Sheriff, will be an Officer to the Sheriff, who ſhall anſwer for an Eſcape by ſuch Bailiff. *Jon.* 65.

And therefore, an *Aſſumpſit* to pay ſuch Special Bailiff more than the Fees allowed by the Statute will be Extortion, and void. *R. Jon.* 65.

[The Under-Sheriff himſelf may aſſign a Bail-Bond in the Name of the High-Sheriff, ſince *Stat.* 4 & 5 *Ann.* but the Under-Sheriff's Clerk may not. *Kitſon* v. *Fagg*, *T.* 3 *G. Str.* 60.]

(F. 1.) What Fees he may take.

BY the *St. W.* 1. 26. No Sheriff, or other Miniſter of the King, ſhall take a Reward to do his Office, *&c.* *Vide Extortion*, (A. 2.)

And by the *St.* 4 *Ed.* 3. 9. Sheriffs ſhall receive and ſafely keep in Priſon Thieves and Felons, by Delivery of the Conſtables, without taking any Thing for the Receipt.

By the *St.* 23 *H.* 6. 10. No Sheriff, Under-Sheriff, Bailiff, *&c.* ſhall take any Profit or Avail of any Perſon by them arreſted or attached, or for letting to Bail, or ſhewing Favour, except *ut infra*.

Nor for making any Return, or Panel.

So by the *St.* 28 *Eliz.* 4. Sheriff, Under-Sheriff, Bailiff of Franchiſe, or any of their Officers, ſhall not directly or indirectly take, for an Extent or Execution of Body, Land or Goods, more than *ut infra*, on Pain of treble Damages to the Party, and 40*l.* a Moiety to the King, and a Moiety to him that will ſue.

And therefore, for Execution, or Return of a *Capias Utlagatum*, or Warrant thereon, no Fee is due to the Sheriff. *Per Cur' Litt.* 65.

So by the *St.* 3 *Geo.* 15. No Sheriff, *&c.* ſhall take any Fee of a Debtor to the King, *&c.* ſave 4*d.* for an Acquittance. *Vide Extortion*, (A. 2.—E.) And ſhall take Poundage on a *Ca' Sa'*, *&c.* only for the Sum remaining *bonâ fide* due, which ſhall be ſpecified on the Back of the Writ, *&c.* on Pain, as for Extortion, *&c.* (*Vide for this Extortion*,) (A. 2.—E.) and 200*l.* beſides, a Moiety to the King, a Moiety to him who will ſue, *&c.*

But by the *St.* 23 *H.* 6. 10. Sheriff may take for Arreſt 20*d.* the Bailiff 4*d.* and Gaoler, if committed to Priſon, 4*d.* for a Copy of a Pannel 4*d.* for Bail-Bond 4*d.*

So by the *St.* 28 *El.* 4. He ſhall not take for an Extent or Execution on Body, Lands or Goods, more than 12*d.* for every 20*s.* where the Sum exceeds not 100*l.* and 6*d.* for every 20*s.* over and above an 100*l.*

And by this Act he may take 12*d.* in the Pound for the firſt 100*l.* and 6*d.* *per* Pound for every Pound above 100*l.* for it was not intended that he ſhould take only 6*d.* *per* Pound for the whole Sum, where that exceeds 100*l.* *R. Cro. Car.* 287. *Dub. Cro. El.* 335. *Acc. Noy* 28, 76. *R. Lat.* 17, 51. *Jon.* 307.

If there be Execution by *Capias ad Satisfaciendum*, the Sheriff ſhall have his Fees for the whole Debt. 1 *Sal.* 331. *Skin.* 363.

So in an Execution by *Elegit*. *Dub.* 1 *Sal.* 331. *Per Holt*, 1 *Sal.* 333. *R. Sal.* 209.

Or by *Fieri facias*. *Skin.* 363.

Tho' the Writ be erroneous, he ſhall have his Fees. *R.* 1 *Sal.* 332.

So he ſhall have Fees upon an Execution of a Judgment in a *Scire facias*. 5 *Mod.* 97.

So he ſhall have Fees for Money levied upon an Extent out of the *Exchequer*.

So, if he levies a Fine for a Miſdemeanor by Proceſs of *B. R.* his Poundage ſhall be allowed upon Payment to the Clerk of the Crown. 2 *Jon.* 185.

And the Sheriff himſelf ſhall have the Fees for Execution, not his Bailiff. *Semb. Lat.* 19, 52.

And ſhall have the Fees, tho' the Execution be within a Corporation; for the Proviſo of the Statute extends to Execution upon Suits within a Corporation, which is not a County of itſelf. *R. Lat.* 51. *Vide Poſt*, (F. 2.)

So by the *St.* 3 *Geo.* 15. Sheriff, Bailiff of Franchiſe, *&c.* may take on executing an *Habere facias Poſſeſſionem*, or *Seiſinam*, 12*d.* for every 20*s.* *per Annum* Value of the Lands not exceeding 100*l.* *per Annum*, and 6*d.* for every 20*s.* *per Annum* above that Value.

So by the *St.* 8 *Geo.* 25. No Sheriff ſhall take for the Extent and *Liberate*, and *Habere facias Poſſeſſionem*, or *Seiſinam*, on the Real Eſtate, and Levy on the Perſonal Eſtate by Virtue of ſuch Extent, any more than the ſame Fees that are appointed

pointed by the *St.* 3 *Geo.* 15. for executing an *Elegit*, *Habere facias Poſſeſſionem*, or *Seiſinam*.

So by the *St.* 3 *Geo.* 15. A Sheriff, who ſhall levy a Debt or other Sum (except *Poſt Fines*) due to the King by Proceſs on the Summons of the Pipe or Green-Wax, by *Levari facias* out of the Court of *Exchequer*, ſhall have 12*d.* out of every 20*s.* for any Sum not exceeding 100*l.* and 6*d.* out of every 20*s.* for every Sum above the firſt 100*l.* by him levied.

And, if he levy by Proceſs on a *Fieri facias*, and Extent out of any of the Offices of the Court of *Exchequer*, 18*d.* out of every 20*s.* not exceeding 100*l.* and 12*d.* for every 20*s.* after the firſt 100*l.* levied.

Provided he anſwers the ſame on his Account by the General Sealing Day of the Term, wherein he ought to be diſmiſſed the Court, or by the Time granted him for paſſing his Account by Warrant from one of the Barons.

If the Sheriff, having ſeiſed Goods or Perſonal Eſtate by Proceſs, *&c.* for a Debt to the Crown, die or be ſuperſeded before a *Venditioni exponas*, or Sale, the Barons ſitting, or any one, may apportion the Fees and Poundage between the preceding and ſubſequent Sheriff.

[Sheriff is intitled to Poundage on Extents in Aid, and if the Money is paid he is intitled to the whole Poundage, tho' a *Venditioni exponas* could not have iſſued till after he was out of Office. *R.* v. *Jetherell*, *H.* 30 *G.* 2. *Parker* 177.]

[But he is not intitled to any other Coſts and Charges. *Ibid.*]

[On Action brought in *Exchequer* by Sheriffs of *London* on Bail-Bond, taken in their own Names for Appearance of Defendant taken on *Exchequer* Proceſs on Proſecution of Attorney-General on Behalf of the Crown for Cuſtomhouſe Penalties and Forfeiture, and *Teſtatum Ca. Sa.* into *Hertfordſhire* againſt Bail, Sheriff of *H.* is intitled to his Poundage, for this is not the Suit of the Crown. *Lake* v. *Turner*, *M.* 7 *G.* 3. 4 *B. M.* 1981.]

[By *St.* 7 *G.* 3. *c.* 29. He is not intitled to Poundage for taking Body in Execution on Proceſs at the Suit of Sheriff, *&c.* on Bail-Bond for Appearance of Perſon ſued for Duties, or for Penalty for Smuggling, or in any Caſe where he would not be intitled if the Suit was directly in the Name of the Crown.]

[By *St.* 14 *G.* 3. *c.* 20. Priſoners acquitted or diſcharged by Proclamation, ſhall be immediately ſet at large in Court, without paying any Fee; and Treaſurer of County, *&c.* ſhall, on Judge's Certificate, pay the uſual Fee, not exceeding 13*s.* 4*d.*]

(F. 2.) Remedy for his Fees.

By thoſe Statutes the Sheriff has a Right to the Fees allowed, and may maintain *Aſſumpſit* upon a Promiſe of Payment. *R. Mo.* 468. *Cro. El.* 654. *R. cont.* 2 *Cro.* 103.

So he may have Debt. *Adm. Cro. Car.* 287. *R.* 1 *Sal.* 331. *Dub. Cro. El.* 335. *R. Noy* 75. *Poph.* 173. *R. Lat.* 19, 52. *R.* 1 *Rol.* 598. *l.* 35. *Mo.* 853.

But he cannot take a Bond for his Fees. *R. Cro. Car.* 287.

Nor can he refuſe to do Execution till his Fees paid. *R.* 1 *Sal.* 330.

And if he refuſes, he may be indicted for Extortion. 1 *Sal.* 330, 331.

Yet the Court will not grant an Attachment againſt him. 1 *Sal.* 331.

Yet, by the *St.* 28 *El.* 4. That Act does not extend to Fees to be taken for Execution in a City or a Town Corporate.

And therefore upon Execution out of an inferior Court in a City or Borough, the Sheriff, Bailiff, *&c.* ſhall not have the Fees allowed by that Act. *R. Cro. Car.* 287. *R.* 1 *Sal.* 331. 5 *Mod.* 97. *R. Noy* 76. *Poph.* 173.

So it does not extend to an Execution in a Real Action; and therefore, the Sheriff ſhall not have Fees upon an *Habere facias Seiſinam*, or *Poſſeſſionem*. *R.* 1 *Sal.* 331.

But this is now remedied by the *St.* 3 *Geo.* 15. *Vide Ante*, (F. 1.)

So it does not extend to Execution upon voluntary Engagements, as a Statute Merchant, or Recogniſance. *R.* 1 *Sal.* 332.

But

But for Execution of a Judgment in a Superior Court, the Sheriff, &c. ſhall have the Fees allowed by the Statute, tho' Execution be done within a City or Corporation. *R. Cro. Car.* 287. *R.* 1 *Sal.* 331. *R. Noy.* 76. *Lat.* 17, 51.

So, if a City, &c. be a County of itſelf, and Execution be done by the Sheriffs of the ſame County, they ſhall have their Fees. *Noy* 76. *Popb.* 173. *Semb. Lat.* 52.

So a Bailiff of a Franchiſe ſhall have his Fees. 5 *Mod.* 97. *Vide St.* 3 *Geo.* 15. *Dub. Lat.* 19, 52.

[The Sheriff may retain his Poundage out of Money levied by *Levari*, on an Outlawry, ordered to be reſtored on giving Security. *Semb. Rex* v. *Burrell, M.* 1731. *Bunb.* 305.]

[Sheriff may retain for his Poundage tho' there is no actual Levy. *R.* v. *Jetherell, H.* 30 *G.* 2. *Parker* 177.]

[And Queſtions relating thereto are determinable on Motion. *Ibid.*]

[On a Writ of falſe Judgement, if Sheriff's Fees are not paid, he may execute a Writ *de Executione Judicii. Barnes.*

(G) Sheriff's Account.

(G. 1.) When it ſhall be made, and of what Things.

BY the *St.* 51 *H.* 3 *de Scac.* All Sheriffs, &c. ſhall make Account to the Treaſurer and Barons of the *Exchequer*, and ſhall come to the *Profer* in the *Exchequer* the *Monday* after *Michaelmas*, and the *Utas* of *Eaſter*, to pay their Farms, Rents, and Iſſues, &c. and ſhall bring at the ſame Time ſuch Monies as they have received of the Summons of the *Exchequer*, and other the King's Debts.

And give a Recogniſance, and make Oath to make their Account. *Mad.* 642, 662. *Vide Ante*, (A. 2.)

And a Writ of Summons from the Pipe iſſued before *Michaelmas* and *Eaſter*, whereby the Sheriff was commanded *quod ſit ad Scaccarium in Craſ S. Mich. et Craſ Clauſi Paſ. et haberet ibi quicquid debet de veteri Firma vel nova, et Debita ſubſcripta. Hale Sh. Acc.* 49.

By the *St. de Rutl'.* 10 *Ed.* 1. (which was an Act of Parliament. 2 *Inſt.* 551. 4 *Inſt.* 114.) The Body of the County ſhall be written in an Annual Roll *per ſe*, and read every Year upon the Accounts of Sheriffs: The *Remanents* of the *Ferms* of the ſame Shires ſhall be written *Poſt Terras datas* in the Annual Rolls, and the Sheriffs ſhall be charged therewith. *H. Sh. Acc.* 65.

In the ſame Annual Rolls ſhall be written the *Ferms* of the Sheriffs, the Profits of Counties, the *Ferms* of Serjeanties and *Aſſarts*, the *Ferms* of Cities, Boroughs, Towns, and other *Ferms*, whereof Anſwer is made yearly in the *Exchequer*. *H. Sh. Acc.* 65.

And alſo all Debts determined, all Groſs Debts ſeparate, and all other Debts that ſeem to be clear. *Mad.* 654. *H. Sh. Acc.* 65.

If the Sheriff does not make his *Profer* as he ought, a Writ goes commanding him to make it. *Mad.* 645.

The Annual Revenue, for which a Sheriff ſhould principally account, was Fixed, or Caſual: The Fixed was called the *Corpus Comitatûs*, the Caſual, *Proficuum Comitatûs*, which being in Ferm to the Sheriff were called *Firma Corporis Comitatûs*, and *Firma de Proficuis Comitatûs*. *Hale Sh. Acc.* 34. *Mad.* 223, 651. 2 *H.* 7. 6. *b.*

The fixed Annual Revenue contained, 1. The Rents of the Tenants of the *Demeſnes* of the King: 2. Groſs Ferms of Lands, not Parcel of the County, let to Farm to Cities, Boroughs, or particular Perſons, or reſerved after the Ferm of the County was aſcertained: 3. Common Fines upon Towns for *Beaupleader*, for Suit, Ward, not attending the Tourn, &c. reduced to a Certainty: 4. *Arrentations* of *Aſſarts* in Waſtes and Foreſts aſcertained by Juſtices in *Eyre*. 5. *Crementum Comitatûs*, or Improvements of the King's Rents. *Hale Sh. Acc.* 35, &c.

Some of theſe and ſeveral other Rents, to be collected by the Sheriffs, were written *ſub Nomine Vic'*, and called *Vicontiel* Rents, and compoſed the Ferm *Corp' Comitatûs*. *H. Sh. Acc.* 37, *&c.*

The Ferm *de Proficuis Comitatus* principally comprehended, 1. The Fines, Iſſues, Amerciaments and other Profits of the County Court. 2. Of the Tourn and Leet of the Sheriff. 3. Of the Hundred or *Wapentake*-Court. *H. Sh. Acc.* 43, *&c.*

Theſe Ferms were paid in Blanch Money, (*viz.* reduced to the Standard and *dealbat'*) or *in Numero*. *H. Sh. Acc.* 24, 54.

Tho' the *Debet* of a Sheriff could not be known, till his Account finiſhed; yet an Eſtimate was uſually made of the Annual Revenue paid by him, and this Sum was paid upon Return of the Writ of Summons of the Pipe at *Michaelmas* and *Eaſter*, which are called, *The Profers of the Sheriffs*. *H. Sh. Ac.* 51. *Mad.* 648, 644.

And theſe *Profers* are continued, but repaid, if nothing appears due from the Sheriff upon the End of his Account. *H. Sh. Acc.* 52.

By the *St.* 2 & 3 *Ed.* 6. 4. Every Sheriff, after he, his Deputy or Attorney, is ſworn to account for the Profits of his Office, ſhall deliver to ſuch of the Lord Treaſurer, Chamberlain, Chancellor, and Barons, as ſhall be preſent, Rolls of Parchment, containing the Sums he hath levied, or might have levied, as Part of his Ferm called *Vicontells*, or any other Ferm charged to him out of the Court of *Exchequer*, of whom, for what Lands, and for what Cauſe levied.

By a Rule 6*th July* 1650, it was ordered, That the Clerk of the *Pipe*, Secondaries, and Sworn Clerks of the ſaid Office, ſhall ſet forth in the ſubſequent Annual Rolls, the particular Rents, as far as they can diſcover, *&c.* which make up the Ferms charged in Groſs Sums, and diſtinguiſh how much of them have been and are to be anſwered. *H. Sh. Acc.* 89, 94.

So by the *St.* 13 & 14 *Car.* 2. 21. *S.* 4. The Remembrancers, *&c.* ſhall write true Copies of Seiſures and Inquiſitions, certified to the reſpective Offices, for the Engroſſer of the Great Roll, *&c.* that Proceſs may iſſue for levying the ſame, *&c.* and they ſhall forthwith certify to ſuch Engroſſer of the Great Roll all ſuch Debts as any Sheriff ſhall be charged with by his Return to the Barons on any *Fieri facias*, *Levari facias*, *Capias*, or other Proceſs, and all Fines and Amerciaments ſet in the Court of *Exchequer* on any Sheriff, *&c.* that they may be charged in the Sheriff's Account, *&c.* on Pain of 40 *l.*

(G. 2.) Of what Things a Sheriff ſhall not be charged.

But by the *Stat. of Rutl'd.* 10 *Ed.* 1. In the *Remanents* the Liveries and Arms aſſigned ſhall be allowed, and other Allowances (if the Sheriff have had any) of the Iſſues of Bailiwicks by our Writs.. *Mad.* 239, 248, 650.

But the Treaſurer and Barons ſhall have View, *&c.* and certify the Chancellor of the due Allowances to be made, and Writs of Allowance ſhall go according to ſuch Certificates.

In the Account as to new Debts, nothing ſhall be put in the annual Roll but Debts ſeparate or found in the Original, but of dead Ferms and deſperate Debts another Roll ſhall be made called *Rotulum Comitatûs*. *H. Sh. Acc.* 64.

And all Debts, to which a Sheriff may return, That the Debtors have Nothing in his Bailiwick, nor had when firſt charged, or that the Debtors be not found, ſhall be eſtreated into a Roll and delivered to circumſpect Men, who ſhall enquire thereof, as by the Treaſurer and Barons ſhall be provided.

After this Statute, the annual Rents which compoſe the *Ferm Corpus Comitatûs* were examined, and Abatement was made in the Ferm of the Sheriff in reſpect of Rents iſſuing out of Lands granted by the King, and this was ſtiled, *Remanentia Firmæ poſt Terras datas*. *H. Sh. Acc.* 66.

And the Account was not made as before *de Firma Corporis Comitatûs*, but *de Remanent' Firmæ poſt Terras datas*. *H. Sh. Acc.* 66.

And out of the annual Roll were alſo omitted *Firmæ mortuæ*, *viz.* that could not be levied, and Debts deſperate. *Hale Sh. Acc.* 67.

By the *St.* 5 *R.* 2. 13. If Accomptants examined by the Barons on Oath, if they can anſwer the King any Thing, ſay, they cannot, they ſhall be diſcharged from other Account.

And, becauſe by ſubſequent Grants the Rents, of which the Ferm of a Sheriff conſiſted, were abated, whereby the Sheriff could not raiſe his Ferm without Grievance to the People, by the *St.* 1 *H.* 4. 11. It was enacted, That the Sheriffs ſhall account in the *Exchequer*, and have Allowance on their Oaths of the Iſſues of their Counties in all Times to come. *H. Sh. Acc.* 74.

But by the *St.* 4 *H.* 5. 2. Theſe Allowances on Oath were reſtrained to Things caſual. *H. Sh. Acc.* 76.

So by the *St.* 34 *H.* 8. 16. Sheriffs were to be charged on their Accounts only with ſuch Sums, as they might levy, and ſhould have Allowance not only for their Charges in the Diets and Charges of the Juſtices of Aſſiſe; but alſo their Expences about the executing their Offices. *H. Sh. Acc.* 78. *Recital in the St.* 2 & 3 *Ed.* 6. 4.

But by the *St.* 2 & 3 *Ed.* 6. 4. This Act was repealed, yet it was thereby enacted, That Sheriffs ſhould have ſuch Tallies of Reward and other Allowances as they had before the making the ſaid Act, or account according to the ſaid Act at their Election. *H. Sh. Acc.* 79.

And in Counties, where no Tallies of Reward have been granted by the King, the Sheriffs ſhall have Allowances for their Charges in the Diet of the Juſtices, or by other Means, as ſhall be in a Bill delivered on Oath, without Warrant or Tally. *H. Sh. Acc.* 79, *&c.*

And ſhall be diſcharged of all Ferms, Goods, Profits, Caſualties, and Sums of Money, as they cannot levy or come by. *H. Sh. Acc.* 80.

And have Deduction and Allowance of all Sums, where the Poſſeſſions, out of which the *Vicontiels* were leviable, are come to the King's Hands, *&c.* And the Lord Treaſurer and Barons may do this without Warrant.

Since this Statute all Sheriffs have waived their Tallies of Reward, and have in their Accounts taken the Benefits allowed by the *St.* 34 *H.* 8. 16. and 2 & 3 *Ed.* 6. 4. *Hale Sh. Acc.* 82.

And have diſcharged themſelves of their *Vicontiels*, the *Ferms de Remanent' Comitatûs*, all *Ferms de Proficuis Comitatûs* (where the Profits did not exceed the Charge) the Caſual Profits and other Things which they could not levy. *H. Sh. Acc.* 82, 83.

And ſuch Diſcharge was made upon the Oath of the Sheriff, that he could not levy them. *H. Sh. Acc.* 83.

By a Rule *6th July* 1650. So much of the Ferms as cannot be explained by Particulars, *&c.* and ſuch Particulars as have not been anſwered in forty Years laſt, and are become illeviable, ſhall be put out of the Annual Roll of the Accounts of Sheriffs, *&c.* *H. Sh. Acc.* 95.

And by the *St.* 13 & 14 *Car.* 2. 21. *S.* 4. No Sheriff ſhall be charged to anſwer in Account any illeviable Seiſure, Farm, Rent, or Debt, or where the Proceſs doth not expreſs of whom, or of what Lands, *&c.* or for what Cauſe they are to be levied.

And all other dead Farms and Seiſures, deſperate, illeviable, and unintelligible Debts, ſhall be left out of the Great Roll and Sheriff's Charge.

So by the *St.* 3 *Geo.* 15. The Lord Treaſurer and Barons, or any two of them, as oft as they ſee fit, on Requeſt of the Sheriff, *&c.* may call the Treaſurer's Remembrancer, Clerk of the Pipe, and ſuch other Officers as they think fit, and cauſe them to bring before them an Account of the Rents and Certainties, written out Yearly in Proceſs to the Sheriff, *&c.* And upon Examination reduce and eſtabliſh the Sums, with which the Sheriff ſhall ſtand chargeable, *&c.* And make Orders purſuant thereto to be entred on Record in the ſeveral Offices: And the Sums ſo ſettled ſhall be the *Profers* of each County, and the Rolls of *Profers* ſhall be made conformable thereto.

(G. 3.) How enforced to make his Account.

A Sheriff ought to make his Account in Perſon, or by Attorney. *Mad.* 658.
And his Account ſhall be Annual, and in a regular Manner. *Mad.* 629.
But by the *St.* 3 *Geo.* 15. No Sheriff or Under-ſheriff ſhall be taken into Cuſtody by any Officer of the Court of *Exchequer* for not being appoſed upon any Proceſs for not finiſhing his Accounts, or, for any Contempt relating to his Account, but by Writ under the Seal of the ſaid Court, or by Warrant, ſigned by one of the Barons, to be executed by the Marſhal of the ſaid Court, or his Deputy, and particularly expreſſing the Name of the Sheriff, *&c.* and his Offence.

(G. 4.) How the Sheriff ſhall be diſcharged by *Quietus*.

When the Sheriff has finiſhed his Account he ſhall have his *Quietus*.
By the *St.* 21 *Jac.* 5. and 13 & 14 *Car.* 2. 21. *S.* 8. When a Sheriff on paſſing his Accounts ſhall have his *Quietus eſt*, he, his Heirs, Executors, Lands, Goods, *&c.* ſhall be abſolutely diſcharged of all Monies by him levied, tho' pretended not to be accounted for, or any other Pretence notwithſtanding, unleſs queſtioned, and Judgment againſt him for the ſame in four Years after his Account or *Quietus*.
And the Officer, by whoſe Default any Proceſs is ſent out againſt him, *&c.* ſhall forfeit 40 *l.* *&c.*
By the *St.* 3 *Geo.* 15. If any Officer, *&c.* retard a Sheriff in paſſing his Accounts by wilful Abſence, *&c.* or upon Payment or Tender of Fees ſhall neglect to inrol, make out, ſign and deliver his *Quietus* in due Time, he ſhall make ſuch Recompence, as the Barons ſhall direct on Complaint in a ſummary Way, *&c.*

(G. 5.) Charge of his Patent and Account.

By the *St.* 3 *Geo.* 15. The ſeveral Officers of *Chancery*, *Exchequer*, *&c.* claiming any Fee from any Sheriff, Under-ſheriff, *&c.* for making out his Patent, or Commiſſion, the *Dedimus* to ſwear him, the Entring the Recogniſance, the Making out and Return of his Proceſs, his Appeal, paſſing his Accounts, *Quietus*, or other Matter concerning the Sheriffalty, may receive the ſeveral Fees therein ſpecified, and no other, on Pain of 5 *l.* to the Party grieved, and treble the Sum taken above the juſt Fees, and treble Coſts, to be awarded by the Court of *Exchequer*, on Proof of the Offence in ſuch ſummary Way as to them ſhall ſeem meet.

Vide more concerning *Sheriff* in *County* (B. 1, &c.—*Dignity*, (B. 5.)—*Juſtices of Peace*, (D. 6, 8.)—*London*, (G.)—*Pleader*, (2 W. 25.)—*Rent*, (D. 8.)—*Retorn*, (F. 1, &c.)

VISITOR.

(A) By whom Viſitation ſhall be made.

(A. 1.) By the King.)

BY the Antient Law of the Realm, the King has Power to viſit and reform all Abuſes in the Church. *Dav.* 4. 2 *Rol.* 230. *l.* 7.
And therefore, all free Chappels of the King's Foundation are viſitable by the King, and not by the Ordinary. 2 *Rol.* 230. *l.* 17.
So all Hoſpitals of the King's Foundation. *Ibid.*
And all Donatives. 2 *Rol.* 230. *l.* 20.
So the King may viſit the Univerſities. *R, in Privy Council* 12 *Car.* 1. 2 *Ruſh.* 327.

So, tho' the King appoints Governors of an Hoſpital, School, &c. he may afterwards viſit; if the Governors are not made Viſitors by expreſs Words. *Eq. Ca.* 182.

So by the *St.* 25 *H.* 8. 21. Archbiſhops or others ſhall have no Authority to viſit any College, Hoſpital, &c. before exempt from their Viſitation, but Viſitation ſhall be by the King, &c.

But by the *St.* 31 *H.* 8. 13. All Monaſteries, Colleges, Hoſpitals, &c. thereby diſſolved, and all Churches, &c. belonging to them, tho' before exempt, ſhall be thenceforth within the Viſitation of the Ordinary or of the King, &c.

So where the King and a Subject join in a Foundation, the King ſhall viſit; for the King is Founder. 2 *Inſt.* 68.

(A. 2.) How he viſits. By his Chancellor.

The Viſitation of the King's free Chappels, Hoſpitals, or Donatives, ſhall be by his Chancellor. *F. N. B.* 42. *A. Dav.* 46. *b.* 2 *Rol.* 230. *l.* 17, 20, 45. *Co. L.* 96. *a.*

And, if any other viſits them, a Prohibition lies. *Reg.* 40. *b.*

(A. 3.) By Commiſſioners.

So the King may make Viſitation by Special Commiſſioners. *Dav.* 46. *b.* 2 *Rol.* 230. *l.* 24.

By the *St.* 25 *H.* 8. 21. Archbiſhop, or other Perſon, ſhall have no Power to viſit any Colleges, Hoſpitals, &c. exempt before the Act, but the Viſitation ſhall be made by Commiſſion under the Great Seal to ſuch Perſons as requiſite.

By the *Stat.* 1 *El.* 1. All Privileges, Juriſdictions, &c. uſed to viſit the Eccleſiaſtical Eſtate and Perſons, &c. ſhall be annexed to the Crown; and the Queen may aſſign Commiſſioners, &c. to have all Juriſdiction, &c. *Vide in Prærogative*, (D. 9.)

By the *St.* 2 *H.* 5. 1. Hoſpitals of the King's Patronage and Foundation, the Ordinaries, by the King's Commiſſion, ſhall inquire of the Foundation, Governance and Eſtate of them, &c. and ſhall certify the Inquiſition in *Chancery*.

(A. 4.) By a Patron.

So, if any Foundation for Charitable Purpoſes be made by a Subject, and no Special Viſitor appointed, the Founder and his Heirs, by the Common Law, are Viſitors. 4 *Mod.* 124. *Ca. Parl.* 45. 8 *Aſſ.* 29. *Eq. Ca.* 180.

As, the Founder of a College or Hoſpital, not Spiritual. *Ca. Parl.* 46. *Bro. Depoſition* 10. 2 *Rol.* 230. *l. ult. Reg.* 41. *a. Noy* 91, 2. *Dub. Cod. Jur. Eccl.* 1148. (or 1107. *Ed. ult.*) *R. Carth.* 93.

So, if Governors be appointed, but no Viſitor, the Governors ſhall viſit. 2 *Rol.* 231. *l.* 2. 10. 10 *Co.* 31. *a.*

By the *St.* 14 *El.* 5. If an Hoſpital be founded, and no Viſitor appointed, the Founder ſhall viſit during his Life.

So by the *Stat.* 39 *El.* 5. where *Maiſons de Dieu, &c.* are founded by Charter.

So the Patron or Founder of any Eleemoſynary Corporation. *Ca. Parl.* 45.

So, if a common Perſon be Founder, tho' the King afterwards gives to the ſame Corporation greater Poſſeſſions. 2 *Inſt.* 68.

Or tranſlates a Chauntry, founded by a common Perſon to a Monaſtery, &c. and endows it. *Ibid.*

So the Founder or Patron of any Eleemoſynary Foundation and his Heirs, are Viſitors, tho' the Patron does not claim to be ſo during his Life. *Ca. Parl.* 45.

And this Viſitatorial Power is conſequent to the Patronage by the common Law, not introduced by any Canon, or Eccleſiaſtical Conſtitution. *Ca. Parl.* 45.

So

So the Viſitation of a Donative Church ſhall not be by the Ordinary, but by the Patron or Commiſſioners appointed by him. *Co. L.* 344. *a. Vide Donative.*

(A. 5.) By the Metropolitan.

So the Archbiſhop of *Canterbury* may viſit the Univerſities of *Oxford* and *Cambridge*, being within his Province, *Jure Metropolit.' R. by the King in Council*, 12 *Car.* 1. 2 *Ruſh.* 327, *&c.*

(A. 6.) By the Ordinary.

(A. 6.) Who ſubject to his Viſitation.

All Spiritual Perſons generally are ſubject to the Viſitation of the Biſhop, or other Ordinary. 2 *Rol.* 229. *l.* 10.

As, Parſon, Vicar, *&c.* 2 *Rol.* 229. *l.* 35.

So a Dean, of Right, is viſitable by the Ordinary. 2 *Rol.* 229. *l.* 25.

So every one having *Curam Animarum.* 1 *Mod.* 12.

By the *St.* 2 *H.* 5. 1. As to Hoſpitals not founded by the King, the Ordinaries ſhall inquire of the Manner of Foundation, Eſtate and Governance, *&c.* and correct and reform, *&c.* according to the Law of Holy Church, as to them belongs.

So every *Spiritual* Hoſpital ſhall be viſited by the Biſhop. 2 *Rol.* 230. *l.* 50. 10 *Co.* 31. 2 *Rol.* 231. *l.* 5. *Noy* 91, 2.

So all Abbies and Priories, of common Right, were viſitable by the Ordinary, as to their Rule and Ordinary, if they were not lawfully exempted. 2 *Rol.* 229. *l.* 17. 231. *l.* 3.

And by the *St.* 35 *Ed.* 1. 4. The Ordinary, tho' an Abbot, Prior, *&c. Alien*, may viſit a Monaſtery, *&c.* ſubject to them in Things belonging to the Rule and Diſcipline of their Order.

And tho' the Patronage of a Deanery, *&c.* by Act of Parliament be given to the King, ſaving to all but the Biſhop all Rights, *&c.* the Dean continues viſitable, when the King has preſented; for the Saving regards the Patronage and Poſſeſſions only. 2 *Rol.* 229. *l.* 30.

So, if an Hoſpital be ſuppreſſed by Act of Parliament, and their Poſſeſſions veſted in the King, the Viſitation of them does not thereby ceaſe, till the Incorporation of them be diſſolved. 2 *Rol.* 229. *l.* 40.

So, by the *Stat.* 14 *El.* 5. After the Death of the Founder, if no Viſitor be appointed, the Biſhop of the Dioceſe or his Chancellor ſhall viſit all Hoſpitals within his Dioceſe, to ſee that they be ordered according to the Statutes of the Foundation; and call to account all Perſons for Receipt of Rents, *&c.*

(A. 7.) Who not.

But the King's free Chappels, Hoſpitals, Donatives, *&c.* were not viſitable by the Ordinary. *Vide ante*, (A. 1.)

So the King might exempt Abbies, *&c.* from the Viſitation of the Ordinary. 2 *Rol.* 232. *l.* 35, 230. *l.* 25.

So, if the King had it in Ward, the Ordinary ſhould not viſit during the King's Cuſtody. *Semb.* 2 *Rol.* 230. *l.* 35.

So, if a Rectory was appropriated to the Abbot, *&c.* it ceaſed to be viſitable by the Ordinary. 2 *Rol.* 229. *l.* 12. *Dav.* 3. *b.*

So, if a Corporation be Lay, the Ordinary ought not to viſit, nor can viſit. 10 *Co.* 31. *a. Sutton. Dub. Cod. J. Eccl.* 1148. (*or* 1107. *Ed. ult.*)

[Whether a Biſhop, as Viſitor, has Juriſdiction in Matters of Property in his Cathedral (as the intermediate Profits of a vacant Prebend, divided among the other Prebendaries during the Vacancy,) or whether they can be determined otherwiſe than by Courſe of Law, is a great Queſtion; but if Executors and Adminiſtrators of deceaſed Prebendaries intervene, he certainly has no Juriſdiction. *Rex* v. *Biſhop of Durham*, *P.* 31 *G.* 2. 1 *B. M.* 567.]

(A. 8) How the Visitation shall be made. By the Bishop himself.

By *Const. Othon. Leg.* 22 *H.* 3. *A. D.* 1237. *Circumeant (Arch. et Episc.) Diœceses suas Temporibus opportunis, corrigendo et reformando Ecclesias. Vide Lind. Const. Oth.* 56.

In Visitatione Diocesanâ, tenetur Episcopus primo visitare Ecclesiam Cathedralem, deinde Diœcesin. Cod. J. Eccl. 996. (*or* 957. *Ed. ult.*)

In Metropolitanâ, tenetur Archiepiscopus suam primùm Ecclesiam et Diœcesin visitare, deinde in singulis Diœcesibus ab Ecclesiâ Cathedrali incipere, indeque pro Libitu ad reliquas Diœceseos Partes transire. Cod. J. Eccl. 996. (*or* 957. *Ed. ult.*)

And Visitation shall be made without Commission for it under the Great Seal. 2 *Rush.* 451.

Visitation by the Bishop, by the antient Law, ought to be annual. *Cod. J. Eccl.* 998. (*or* 958. *Ed. ult.*)

But because the Archdeacon makes an annual Visitation, by the modern Law and Practice, the Bishop makes only a triennial Visitation, *Diœcesim totam tertio quoque Anno visitet et Procurationes accipiat, ut aliis Temporibus visitet, ei liberum esto, modo suis Impensis id faciat. Cod. J. Eccl.* 998. (*or* 958.)

By *Canon* 60 *A. D.* 1603. Confirmation shall be at the Bishop's Visitation every third Year.

(A. 9.) By the Archdeacon.

Visitationem per Modum Scrutationis Simplicis tanquam Vicarius Episcopi Archidiaconus habet de Jure Communi. Lind. 49.

(A. 10.) Offences inquirable at a Visitation.

Ad Episcopum principaliter spectat inquirere de Criminibus Ecclesiasticis, ut de Adulterio, Usura, Sacrilegio, Simoniâ, et quolibet Mortali Peccato. Lind. Const. Othon. 56.

By *Canon* 109. *A.* 1603. If any offend their Brethren by Adultery, Whoredom, Incest, or Drunkenness, by Swearing, Ribbaldry, Usury, or other Uncleanness and Wickedness of Life, the Churchwardens shall present the Offenders.

So by *Canon* 110. If they know any to be a Hinderer of God's Word to be read or preached, or of the Execution of those Constitutions, or Fautor of usurped or foreign Power, by Law rejected, or Defender of Popish and erroneous Doctrine.

So by *Canon* 111. In all Visitations, they shall present the Names of all, who behave disorderly in the Church, or by Ringing, Walking, Talking or other Noise, hinder the Minister or Preacher.

(A. 11.) By what Means Inquiry shall be made. By Presentment.

Antiently such Persons as the Ordinary selected were cited to make Information upon Oath *de Moribus Parochianorum* within their District. *Cod. J. Eccl.* 1000. (*or* 960. *Ed. ult.*).

Afterwards a Citation was granted against 4, 6, or 8 *juxta Amplitudinem Parochiarum, quod compareant, &c. super inquirendis ab eisdem Visitationem nostram, &c. concernen' Veritatem quam noverint dicturi, &c.* who by the Canon Law are stiled, *Testes Synodales. Cod. J. Eccl.* 1000. (*or* 960.)

And by the *Const. of Boniface,* 45 *H.* 3. *A.* 1261. *Laici, ubi de Subditorum Peccatis et Excessibus corrigendis per Prælatos et Judices Ecclesiastic' inquiritur, ad præstand' de Veritate dicendâ Jurament' per Excommunicationem, si Opus fuerit, compellantur. Lind.* 109.

Afterwards, at the Time of the Reformation, and before, Presentment was made by the Churchwardens alone, or with two, three, or more Parishioners. *Fide dignis* (who since are called *Side-men* or Assistants.) *Cod. J. Eccl.* 1000. (*or* 960.)

And by the *Canon* 1571. *Æditui Adulteros, Fornicarios, &c. in Episcoporum & Archidiaconorum Visitationibus patefacient. Cod. J. Eccl.* 1000. (*or* 960.)

And therefore, the Bishop or Archbishop before his Visitation *hos Oeconomos ad comparend' in eorum Visitatione vocare solent, eisque Articulos ministrare, ac eos de Fidelit' super eisdem inquirend' et de Compertis Præsentationem exhibere, Juramento Corporali onerare. Ought. Ordo Jud.* 228.

By *Canon* 26. *A°.* 1603. Churchwardens or Side-men having taken their Oaths to preſent, *&c.* who ſhall incur Perjury by neglecting or refuſing to do ſo, *&c.* ſhall not be admitted to Communion.

The Oath of Churchwardens was at firſt *ad pateſaciend'* what they knew to be bad *in Rebus et Perſonis*, but Articles were delivered to them, and they were ſworn to make Preſentment upon them. *Cod. J. Ecc.* 1000. (*or* 960.)

But, if an Oath is required to preſent according to Articles delivered, where any Articles are not within Eccleſiaſtical Juriſdiction, a Prohibition goes; for the Oath required ought to be only, *to preſent ſuch Articles as to their Knowledge were preſentable by the Eccleſiaſtical Laws. Cod. J. Eccl.* 1001. (*or* 961. *Edit. ult.*)

So a Preſentment *quod A. commiſit Adulterium, &c.* is inſufficient without ſaying *cum quâ. Ought. O. J.* 229.

So a Biſhop or Archdeacon, *ex Famâ publicâ vel Relatione Perſon' Fide dign'*, having Notice that any has committed a notorious Crime, or is ſuſpected *de Opinione erroneâ aut Perverſitate obſtinatâ*, may cauſe him to be cited *ad comparend' perſonaliter coram eo in Loco ſolito Judiciali Articulis, &c. præſertim* to the Crime ſpecified, *ſibi objiciendis Reſponſur'. Ought. O. J.* 215. (A. 12.) By Inquiry *ex Officio.*

So, if there be no Preſentment, nor Inquiry *ex Officio, quælibet Perſona* (able to pay Coſts) *habet Intereſſe Judicis Officium implorare et voluntarie promovere. Ought. O. Jud.* 225. (A. 13.) By Promotion or Accuſation of a Stranger.

(A. 14.) By a Special Viſitor.

So upon the Foundation of any Corporation Aggregate for a Charity, the Founder may conſtitute a Special Viſitor. *Co. L.* 96. *a.*

As, upon the Foundation of any College, or Hall in an Univerſity.

Or Hoſpital, Free-School, *&c.*

[No particular Words are required to create a Viſitor; it is ſufficient if the Founder's Intention appears. *Attorney-general* v. *Talbot, H.* 1747. 3 *Atkyns* 662. 1 *Vezey* 78. *Attorney-general* v. *Middleton, T.* 1751. 2 *Vezey* 327.]

[The viſitatorial Power may be divided. *Ibid.*]

[Governors may be Viſitors, tho' the legal Eſtate is veſted in them, but not when they are to receive the Revenue. *Ibid.*]

[The Founder may appoint a ſpecial Viſitor for a particular Purpoſe, and no further: He may appoint a general Viſitor, and yet appoint inferior particular Powers to others in the firſt Inſtance. *Saint John's College Cambridge*, v. *Toddington, H.* 30 *G.* 2. 1 *B. M.* 158.]

And where there are ſuch Special Viſitors, Governors or Overſeers, by the *St.* 39 *El.* 6. they are not ſubject to the Commiſſioners for Charitable Uſes.

[If a College has, by Charter, particular Powers as to a School, as to remove the Maſter, *&c.* Chancery will not interfere in ſuch Matters, tho' they are not appointed general Viſitors; but as to Management of the Revenue, it will. *Attorney-general* v. *Corporation of Bedford, T.* 1754. 2 *Vezey* 505.]

If a Biſhop, by the Deſignation of *the Biſhop of ſuch a See*, be appointed Viſitor, that extends to all Biſhops of the ſame *See*: As, if the Statutes of a College ſay, *Epiſcopus Elienſis ſit Viſitator. Semb. F,g.* 380, 312.

If a Special Viſitor be appointed, he has a General Authority to inſpect, that the College, *&c.* be governed according to the Laws and Statutes of the Founder. 4 *Mod.* 110. (A. 15.) What Authority he ſhall have.

And may make Viſitation for Redreſs of Grievances. 4 *Mod.* 109.

So, tho' the Statutes of a College ſay, that he ſhall viſit *de Quinquennio in Quinquennium ſemel*, yet he may at other Times hear Appeals, remedy upon Complaint, *&c.* for his general Authority ſhall not be reſtrained but by Negative Words. *Semb.* 4 *Mod.* 109. *Ca. Parl.* 42.

So

So a Visitor has Authority, upon Refusal to admit, as well as upon *Ouster* of, a Fellow, *&c.* of a College. 4 *Mod.* 369. *Skin.* 13.

So a Visitor has Authority, as incident, to deprive. 4 *Mod.* 110. *Ca. Parl.* 43.

To proceed upon a Grievance done in the Time of his Predeceſſor. *R. Skin.* 13.

[If there is a Visitor of a College, his Authority extends to Fellowships and Scholarships, *there to be placed* by a subsequent Charity. *Attorney-general*, v. *Talbot*, *H.* 1747. 3 *Atkyns* 662. 1 *Vezey* 78.]

[Tho' the Founder has given a College a Visitor, yet, as to a separate Benefaction given them in Trust, they are subject to the Jurisdiction of Chancery as Trustees. *Green* v. *Rutherforth*, *P.* 1750. 1 *Vezey* 462.]

[Subsequent Benefactions may be put under the Power of the Visitor, or not, at the Will of the Donor. *Ibid.*]

[A Party's answering to an Appeal before the Visitor does not give him Jurisdiction, if he has it not otherwise. *Ibid.*]

[Visitor can judge only according to the Statutes of the College. *Ibid.*]

[Therefore, in Cases in which the Visitor cannot give a Remedy, the Relief belongs to the King's Courts of general Jurisdiction. *Ibid.*]

[The Founder may prescribe particular Modes and Manners, as to Part. *Saint John's College Cambridge* v. *Todington*, *H.* 30 *G.* 2. 1 *B. M.* 158.]

[The Power of a Visitor must be collected from the whole Purview of the Statutes considered together. *Ibid.*]

[Tho' a general Visitor has incidental Power, yet the Founder may restrain him as to particular Instances. *Ibid.*]

[The Bishop of *Ely* is general Visitor of *St. John's College Cambridge*, except as to altering the Statutes. *Ibid.*]

[He is Visitor as to the Election of Fellows, as well of Doctor *Keton*'s (or the *Southwell*) Fellows as the Rest. *Ibid.*]

[Ingrafted or annexed Fellowships (tho' ingrafted by Indenture) are to be considered as Part of the old Foundation, if no Statutes are given by the Founder of them. *Ibid.*]

[A Clause of Distress given to a third Person, does not take away the specific Remedy of the injured Person's applying to the Visitor. *Ibid.*]

(B) Determination of a Visitor final.

SO, if a Visitor gives Sentence, it shall be definitive; for no Appeal lies to the King, or elsewhere. 4 *Mod.* 112. *R. Dy.* 209. *a. R.* 3 *Mod.* 265. *Skin.* 13.

And therefore, if his Sentence or Deprivation be shewn in Pleading, it is not necessary to say for what Cause it was; for the Cause is not traversable. 4 *Mod.* 124. *Ca. Parl.* 46, 53.

So a *Mandamus* does not lie to restore a Person deprived by him. 4 *Mod.* 112, 122. *Ca. Parl.* 47. *R.* 3 *Mod.* 265.

So his Sentence shall not be examined in a collateral Action. *Cont. per* 3 *J. but Holt*, *Ch. J. acc.* 4 *Mod.* 113, 123.

And this Judgment was reversed in Parliament. *Ca. Parl.* 56. *Skin.* 447. *ad* 516.

No more in a Temporal than in a Spiritual Corporation of which he is Visitor. *Cont. per* 3 *J. but Holt*, *acc.* and the Judgment was reversed. 4 *Mod.* 116, 121. *Ca. Parl.* 56.

But the Power of a Visitor may be qualified or restrained by the Statutes of the College. *Semb.* 4 *Mod.* 120. *Ca. Parl.* 51.

So, if he, who is no Visitor, attempts a Visitation, a Prohibition lies. 4 *Mod.* 110. *Semb.* 2 *Rol.* 230. *l.* 15, 27.

So,

So, if a Viſitor be appointed by the Founder of a College, That does not extend to a Foundation of other Fellowſhips added by another to the ſame College. *Semb.* 5 *Mod.* 422.

So, if a Viſitor intermeddles with a Matter out of his Juriſdiction, a Prohibition lies. *Ayl.* 2 *Vol. Hiſt. of Oxford* 80, 94. *Reg.* 40.

So an Appeal lies to the King himſelf from the Sentence of a Viſitor. *Ayl. Hiſt. of Oxford*, 2 *Vol.* 84, 86.

(C) How his Power ſhall be exerciſed.

THE Power of a Viſitor muſt be regulated according to the Statutes of the College, or Cuſtoms of the Place.

If an Appeal be exhibited to him, he muſt take it. *Ayl. H. of Oxford* 2 *Vol.* 81.

He muſt inhibit all Proceeding againſt the Appellant till the Appeal be determined. *Ayl.* 2 *Vol.* 81.

He muſt direct the Complaint, to which an Anſwer is required, to be put in Writing. *Ayl.* 2 *V.* 95.

So he muſt ſummon all concerned to appear before him. *Ayl.* 2 *V.* 81.

And he may ſuſpend or deprive any for Contumacy; for it is requiſite for the Exerciſe of his Office. *Ayl.* 2 *V.* 80. 4 *Mod.* 110. *Ca. Parl.* 43.

So he may adminiſter an Oath. *Ayl.* 2 *V.* 94.

Or require an Anſwer upon Oath. *Ayl.* 2 *V.* 94.

He ought to give convenient Time for an Anſwer. *Ayl.* 2 *V.* 95.

And for Examination of Witneſſes. *Ayl.* 2 *V.* 95.

He muſt always proceed upon a General Viſitation, or Particular Appeal, *ſummariè, ſimpliciter, & de Plano ſine Strepitu aut Figura Judicii, viz.* according to mere Law and Right. *Ayl.* 2 *V.* 95.

Yet the Forms preſcribed by the Statutes muſt be obſerved. *Ayl.* 2 *V.* 95.

[He may inquire of Facts committed before an Act of Grace.]

[He may inquire into and puniſh *one*, for a Corporate-act.]

[The Biſhop of *A.* and his Succeſſors, being appointed Viſitors, it veſts in the Succeſſors, without the Words *for the Time being*.]

[If he is firſt appointed general Viſitor, and afterwards is appointed ſpecial Viſitor, and proceeds as ſpecial Viſitor, a Prohibition will lie, for the Crown had no further Power to enlarge the viſitatorial Power. *Bentley* v. *Biſhop of Ely*, *T.* 5 *G.* 2. *Fort.* 298. *Str.* 912.]

[*N. B.* This Judgment was reverſed on Error in the Houſe of Lords.]

[A general Viſitor cannot have a *Mandamus* to help him to viſit his College; nor to compel an inferior Officer to do his Duty. *Doctor Walker's Caſe*, *H.* 9 *G.* 2. *B. R. H.* 212.]

(D) Remedy, if a Viſitor acts contrary to Law.

BUT a Viſitor has not Authority to determine Matters againſt the Statutes of the Realm; for he is a private Judge, who is to determine only Offences againſt the Statutes of the College, where he is Viſitor. *Semb.* 4 *Mod.* 238, 241, 369.

(E) If he acts without lawful Authority.

SO, if a Viſitor acts, when he has no Right to be Viſitor, a Prohibition lies. 2 *Mod. Ca.* 367.

[If no Perſon applies to the Court, who claims the viſitatorial Power, except one who has long exerciſed it, the Court will not grant a Prohibition on the Motion of a ſingle Fellow, who ſuggeſts that the Power is in another. *Martyn* v. *Archbiſhop of Canterbury*, *T.* 11 & 12 *G.* 2. *Andr.* 258.]

U M P I R E.

Vide Arbitrament, (F.)

U N C O R E P R I S T.

Vide Pleader, (2 X. 5.)

U N D E R S H E R I F F.

Vide Pleader, (2 S. 21.)—*Viſcount*, (B. 1.)

U N I O N.

Union.

AS to the Union of Churches, by whom it ſhall be made, and the Effect of it, *Vide in Advowſon*, (F. 1, &c.)

As to the Union between the Kingdoms of *England* and *Scotland*, *Vide in Scotland*, (D. 1, &c.)

As to the Union of *Wales* with *England*, *Vide in Wales*, (A. 1.)

The uſual Union of Kingdoms or States conſiſts in the Union of Sovereignty, of Name, of Language, of Laws and Occupations.

Si uniantur duo Populi, non amittentur Jura, ſed communicabuntur. Gro. de J. Bel. & Pac. l. 2. c. 9. ſ. 9. Cont. 4 Inſt. 347.

U N I T Y.

Vide Diſmes, (E. 9.)

U N I V E R S I T Y.

(A) Univerſities, What are.

IN the Kingdom of *England* there are only the two Univerſities of *Cambridge* and *Oxford*.

Univerſitas imports the Incorporation of the Profeſſors of all Sciences in a Body Politick. *Dr. Ayliffe* 2.

And frequently is uſed for the Place, in which thoſe Profeſſors reſide for their Studies. *Dr. Ayliffe* 2.

The Word was uſed in ſuch Senſe in the Time of *Rich.* 1. *John*, and moſt Part of the Time of *H.* 3. *Dr. Ayliffe* 2.

The King may make a Univerſity.

And

And may make it without the Conſent of the Ordinary. 2 *Keb.* 65.

[The Corporations of Univerſities are Lay-Corporations, and the Crown cannot take from them any Rights they have by Charter or preſcriptive Uſage. *Rex* v. *Vice-Chancellor of Cambridge*, *P.* 5 *G.* 3. 3 *B. M.* 1647.]

(B) Cambridge; the Privileges.

THE Antient Charters of *Cambridge* being deſtroyed by the Rebels, *per St.* 8 *R.* 2. *Nu.* 11. The Aſſiſe, Conuſance, and Correction *Panis, Cerviſiæ, Ponder' Menſur' Regrator et Foreſtallor'* were granted to the Chancellor and Scholars of the ſame Univerſity. 4 *Inſt.* 228.

By *St.* 13 *Eliz.* 21. It was enacted that the Univerſity of *Cambridge* ſhould be incorporated, tho' it was anciently a Corporation. 4 *Inſt.* 227.

That the Letters Patent of 3 *Eliz.* and all Letters Patent of the Queen or her Predeceſſors ſhould be as good and effectual, as if they had been recited and confirmed by the ſame Act. 4 *Inſt.* 227.

That the Chancellor, Maſters, and Scholars of the ſame Univerſity ſhould enjoy all Manors, Franchiſes, Privileges, *&c.* to them granted, *&c.* 4 *Inſt.* 227.

[The Charter of *Eliz.* does not repeal the old Cuſtoms and Uſages of the Univerſity, except in Caſes where they chuſe it; they may act partly under one, partly under the other; and an Election according to Uſage is good, tho' a ſubſequent Charter directs another Mode. *Rex* v. *Vice-Chancellor of Cambridge*. *P.* 5 *G.* 3. 3 *B. M.* 1647.]

[Court-Leet, tho' anciently granted to the Town, is now in the Poſſeſſion of the Univerſity. *Semb. Ibid.*]

[By Letters Patent, 26 *H.* 8. and 3 *Car.* 1. It has a concurrent Authority to print Acts of Parliament, and Abridgments of them, within the Univerſity. *Baſket* v. *Univerſity of Cambridge*, *M.* 32 *G.* 2. 2 *B. M.* 661.]

As to the Courts of the Univerſities, *Vide in Courts*, (M.)

As to the Conuſance of Pleas there, *Vide Courts*, (M.—P. 2, 4.)

(C) Oxford; The Privileges.

SO by *St.* 13 *Eliz.* 21. All Charters and Letters Patent, *&c.* by the Queen or her Predeceſſors to the Univerſity of *Oxford* as well as to *Cambridge*, are confirmed, the Univerſity is incorporated *de Novo*, and all Manors, Franchiſes, Privileges, *&c.* which they of Right ought to have, are eſtabliſhed. 4 *Inſt.* 227.

The Chancellor of the Univerſity is a Juſtice of Peace by Preſcription, as well as by Charter. 2 *Vent.* 33.

By Ancient Charters they have Juriſdiction *tam in Laicos quam in Clericos.* 2 *Vent.* 33.

So by *St.* 14 *R.* 2 & 14 *H.* 8. confirmed by *St.* 13 *Eliz.* 21. The Univerſity has Conuſance of all Pleas for Treſpaſs, and all Complaints, Miſdemeanors and Crimes (except Pleas of Freehold) *Ubi Scholares, Servi aut Miniſtri ſunt una partium ſec' Statuta vel Conſuetudines, &c. vel ſec' Legem Regni ad Voluntatem Cancellarii: Ita quod Juſtic' de B. R. de C. B. vel de Aſſizis non ſe intromittant. Vide Courts*, (M.)

And therefore where a Scholar is Party, the Vicechancellor's Court ſhall hold Plea in all Perſonal Actions *ſec' Legem Terræ, aut Morem Univerſitatis. Litt.* 10. 1 *Sal.* 343.

So, if the Wife or Daughter of a Scholar is Plaintiff againſt another Scholar, who prays a Prohibition; for tho' the Wife is not a Scholar or Servant; yet the Defendant being a Scholar, the Suit ought to be in the Vicechancellor's Court. *R. Cro. Car* 73. *Lit.* 41.

[Conuſance

[Conuſance muſt be thus claimed; it muſt be demanded *primo Die*, in Behalf of the Univerſity; Entry of Warrant of Attorney from the Chancellor of Univerſity to claim Conuſance muſt be read, then Entry of the Writ ſued out, then Letters Patent of Univeſity, then Exemplification of Act of Parliament confirming them, then Record of like Conuſance formerly allowed, then Affidavitsof Defendant's being intitled, (as that he is a Barber in *Oxford*, matriculated in the Univerſity, dwells in it, is Servant of a College with a Stipend,) and then the Warrant of Attorny; the Court will make Order to ſhew Cauſe. *Woodcocke* v. *Brooke*, *P.* 9 *G.* 2: *B. R. H.* 241.]

[The whole Progreſs of the Proceedings, till the Inſtant of making the Claim, muſt be ſet out in the Entry of the Record of the Claim; they muſt be ſtated in the ſame Roll with the Claim: if the Declaration is of *Hilary* delivered juſt before *Eaſter*, the Claim may be entered on a Roll of *Hilary*, thus ſetting one Fiction of Law againſt another; the Claim muſt be made on the very *firſt* Day of *Eaſter*, for after an Imparlance the 4th Dayis allowed *ex Gratia* to plead, but this does not extend to claiming Conuſance.—And if Defendant had Notice of the Cauſe of Action before the Return of the *Capias*, the Claim muſt be on the Return of the Writ. *Leaſingby* v. *Smith*, *T.* 9 *G.* 3. 2 *Wilſ.* 406.]

[It is not neceſſary to ſhew the Allowance of like Conuſance, for it is granted by Act of Parliament. *Ibid.*]

So Conuſance ſhall be allowed, where an Action upon the Caſe is brought againſt a College in their Corporate Capacity, *viz.* Againſt Maſter and Fellows. *R. per* 3 *J. Atkins cont.* 1 *Mod.* 164.

But the Univerſity Court ſhall not hold Plea in an Action Real.

Nor in Ejectment; for thereby Poſſeſſion of the Freehold ſhall be recovered. *R. Cro. Car.* 88.

Nor in Treſpaſs *Quare Clauſum fregit*, for the Freehold may come in Queſtion.

Nor for the Penalty of a Statute. *Skin.* 665. *R. Sal.* 671.

So Privilege of the Univerſity will not be allowed, where the Suit is for an equitable Matter in *Chancery*. *R.* 2 *Vent.* 362. *Vide in Chancery*, (3 X.)

Nor where a Tradeſman is matriculated and regiſtred in the Univerſity as a Servant to a Scholar, but lives in the City, and does not attend in College as a Seruant. *R.* 2 *Vent.* 106.

[Conuſance is not allowed for one who tho' ſtill a Member, and ſometimes is at *Oxford*, yet is a Curate elſewhere, and reſides there generally. *Hayes* v. *Long*, *T.* 6 *G.* 3. 2 *Wilſ.* 310.]

[The Chancellor ſhould certify Reſidence, and there ſhould alſo be an Affidavit of it. *Semb. Ibid.*]

If the Privilege of the Univerſity is allowed upon Record in the ſame Court, it ſhall be afterwards allowed upon Motion in another Caſe, but otherwiſe it muſt be pleaded. *Sal.* 450. *Skin.* 665.

[By *ſtat.* 17 *G.* 2. *c.* 40. *ſſ.* 11. No Perſon ſhall retail Wine in either Univerſity without Licence from the Chancellor or Vice-Chancellor of *Oxford*, or the Chancellor, Maſters and Scholars of *Cambridge*, reſpectively, on Pain of 5 *l.* But this is not to affect the Privileges of the Mayor, *&c.* of *Oxford.*]

School and Schoolmaſter.

BUT by *Conſt. Tho. Arundel in Conc. Oxon, H.* 4. *Magiſtri, &c. docentes in Artibus aut Grammaticâ Pueros, &c. de Materia aliqua Theologicâ contra determinata per Eccleſiam, nullatenus ſe intromittant inſtruendo eoſdem, nec permittant Scholares, &c. de Fide, &c. diſputare, ne per Ordinarium gravit' puniantur. Lind.* 283.

So by *St.* 23 *El.* 1. A Schoolmaſter or Teacher preſuming to teach contrary to this Act, (*viz.* who abſents from Church for a Month, or is not allowed by the Biſhop or Ordinary of the Dioceſs) being convict, ſhall ſuffer a Year's Impriſonment, without Bail, and be diſabled to be a Teacher of Youth.

And he, who keeps ſuch a Schoolmaſter, ſhall forfeit for every Month 10 *l.*

So by the *St.* 1 *Jac.* 4. No Perſon ſhall keep a School out of the Univerſities, except in ſome Publick or free Grammar School, or in ſome Gentleman's Houſe, not Recuſant, or licenſed by the Archbiſhop or Biſhop of the Dioceſe, on Pain of 40 *s. per* Day, *&c.*

So by *St.* 13 *&* 14 *Car.* 2. 4. Every Schoolmaſter of a Publick or Private School, *&c.* ſhall ſubſcribe the Declaration therein: And if any teach, as a Tutor or Schoolmaſter, before Licence from the Archbiſhop or Biſhop of the Dioceſs, *&c.* or before ſuch Subſcription, (but Subſcription, only as to his Conformity to the Liturgy, is now taken away by *St.* 1 *W. & M.* 8. *and* 5 *Geo.* 6.) he for the firſt Offence ſhall have three Months Impriſonment; for the ſecond the like, and forfeit five Pounds.

By *St.* 17 *Car.* 2. 2. It ſhall not be lawful to teach any Publick or Private School, unleſs he firſt ſubſcribe the Oath againſt Taking up Arms, *&c.* and frequent Divine Service, on Pain of 40 *l.*

By *St.* 12 *An.* 7. He ſhall ſubſcribe Declaration to conform, *&c.* have Licence, *&c.* receive Sacrament in a Year before, take the Oaths, and ſubſcribe Declaration againſt Tranſubſtantiation, and not afterwards reſort to Conventicle, *&c.* But this is now repealed by *St.* 5 *Geo.* 6.

By *St.* 5 *El.* 1. Every Schoolmaſter, Publick or Private Teacher of Children ſhall take the Oath of Allegiance.

By *St.* 7 *Jac.* 6. He ſhall take it before the Biſhop of the Dioceſs or Ordinary in open Court.

By *St.* 1 *W. & M.* 8. Inſtead of the former Oaths, the Oaths thereby preſcribed.

By *St.* 13 *&* 14 *W.* 3. 6. 1 *Ann.* 22. *&* 1 *Geo.* 13. He ſhall take the Oaths of Allegiance, Supremacy, and Abjuration.

The *St.* 23 *El.* 13 *&* 14 *Car.* 2. extend to an Uſher, or other Aſſiſtant to a Schoolmaſter.

And, if a Suit is inſtituted in the Eccleſiaſtical Court for keeping a School without Licence, a Prohibition lies. *Dub. Sal.* 672. *R. Carth.* 464, 5.

UNLAWFUL ACT.

Vide Juſtices, (M. 10.)

VOLUNTARY BOND.

Vide Chancery, (4 D. 22.)

VOLUNTARY CONVEYANCE.

Vide Chancery, (2 T. 9, 16.—3 M. 5.)

VOLUNTARY SETTLEMENT.

Vide Chancery, (3 N. 5.—4 H. 9.)

VOTING IN PARLIAMENT.

Vide Parliament (C. 26, &c.)

VOUCHEE.

Vide Eſtates, (B. 29.)—*Voucher*, (D. 1, &c.—E. F.—1, 2.)

VOUCHER.

(A) Voucher.

(A 1.) In what Actions it lies.

VOUCHER lies in Real Actions, where the Tenant vouches ſuch an One, who is bound to Warranty, to defend the Right againſt the Demandant, or to render in Value. *Co. L.* 101. *b.*

It lies in all Real Actions for Recovery of Land, except *Aſſiſe*. *Vide infra.*

In Right of Ward. 2 *Rol.* 744. *l.* 47.

In Right of Advowſon. 2 *Rol.* 745. *l.* 3.

So, in a Writ of Admeaſurement of Paſture. 2 *Rol.* 745. *l.* 29.

But in *Aſſiſe* the Tenant cannot vouch: for it is *feſtinum Remedium*. 2 *Rol.* 745. *l.* 21.

Nor in a Writ of Entry in the Nature of an Aſſiſe; for it is contrary to the Suppoſal of the Writ. 2 *Rol.* 745. *l.* 25.

So in Partition the Defendant cannot vouch. 2 *R. Mo.* 21.

Nor in Dower againſt the Heir. 2 *Rol.* 745. *l.* 14.

Or *quod ei deforciat* for Recovery of Land, claimed as Dower; for it is in the Nature of Dower. 2 *Rol.* 744. *l.* 42.

Nor in *Quare Impedit*, for Danger of a *Lapſe*. 2 *Rol.* 744. *l.* 52.

Nor in Ejectment of Ward. 2 *Rol.* 744. *l.* 47.

Nor in *Scire facias* to execute a Fine. 2 *Rol.* 745. *l.* 4.

Nor in *Quod permittat*. 2 *Rol.* 745. *l.* 15.

Or Writ of Intruſion. 2 *Rol.* 745. *l.* 17.

(A. 2.) How it ſhall be made.

A Tenant may vouch generally without ſhewing Cauſe. 2 *Inſt.* 246.

(A. 2.) When Cauſe ſhall be ſhewn.

But he muſt ſhew Cauſe for the Voucher, when the Voucher is out of the Common Courſe: As, if a Man vouches himſelf. 2 *Rol.* 753. *l.* 10.

Or himſelf and a Stranger; himſelf and another Parcener, *&c.* 2 *Rol.* 753. *l.* 15.

(B) Counterplea of Voucher.

(B. 1.) By the Common Law.

IF the Tenant vouched, the Demandant by the Common Law might counterplead, *viz.* he might by Replication ſhew, that ſuch Voucher ought not to be allowed.

As, that the Vouchee or any of his Anceſtors had Nothing in the Tenements. *Jon.* 412.

That there was no ſuch Perſon, as the Vouchee. 2 *Inſt.* 245.

That the Vouchee was a *Villein*. 2 *Inſt.* 245.

That the Vouchee was dead. 2 *Inſt.* 246.

If Iſſue be upon the Counterplea, and at *Niſi prius* the Vouchee makes Default, after a *Petit Cape* returned and no Appearance, the Demandant ſhall have Judgment. *R. Jon.* 412, 13.

(B 2.) By

(B. 2.) By Statute.

But now by the *St. W.* 1. 3 *Ed.* 1. 40. In Writs of Poſſeſſion; As, *Mort d' Anceſter, Ayel, Coſinage, Nuper obiit*, Intruſion and the like, if the Tenant vouches, there ſhall be a Counterplea, That the Tenant or his Anceſtors firſt entred after the Death of him, of whoſe Seiſin the Demandant claims.

So in *Beſaile*, and other Actions *Anceſtrel* poſſeſſory. 2 *Inſt.* 241.

So in Dower againſt a Stranger, Right of Ward, *&c.* for it is poſſeſſory in it's Nature. 2 *Inſt.* 241.

And it will be a good Counterplea, if the Tenant, who vouches, is Tenant by Reſceit, by Voucher, *&c.* 2 *Inſt.* 242.

If his Anceſtor, who abated, leaſed for Life, and granted the Reverſion to *A.* who granted to the Tenant. 2 *Inſt.* 242.

If *A.* and *B.* abated to the Uſe of *B.* who afterwards granted to *A.* he being a Coadjutor to the Abatement will be within the Statute. 2 *Inſt.* 242.

But there is no Counterplea in a *Formedon*, or other Writ of Right in it's Nature. 2 *Inſt.* 241.

Nor, if the Anceſtor, who abated, is evicted by *A.* who enfeoffed the Tenant. 2 *Inſt.* 242.

If the Abator enfeoffs *A.* and takes back the Eſtate tohim and *B.* and then both vouch. 2 *Inſt.* 242.

So, by the *St. W.* 1. 40. In Writs of Right, and alſo in poſſeſſory Writs, there ſhall be a Counterplea, That the Vouchee or his Anceſtors never had Seiſin of the Lands in Demand, or the Services of them, ſince the Seiſin of him, by whom the Demandant claims, and before the Writ purchaſed, whereof he might enfeoff the Tenant or his Anceſtors.

So, if a Body Politick be vouched, *That the Body or their Predeceſſors never had Seiſin, &c.* 2 *Inſt.* 244.

If Huſband and Wife are vouched, *That the Wife or her Anceſtors never had, &c.* 2 *Inſt.* 244.

If two are vouched, *That one of them, &c. had not, &c.* 2 *Inſt.* 244.

But, there is no Counterplea within this Statute, if the Vouchee had for Life, or for Years, jointly with another, *&c.* for it may be by Feoffment *de Facto*, or other Conveyance. 2 *Inſt.* 244.

If he ever had Seiſin, tho' it is avoided or determined. 2 *Inſt.* 244.

If the Vouchee is preſent in Court, and enters immediately into Warranty, the Demandant cannot counterplead. 2 *Inſt.* 243.

If the Demandant counterpleads, and the Tenant waives his Voucher, he may afterwards plead in Abatement or Bar. 2 *Inſt.* 242.

So, if he demurs to the Counterplea, and it is adjudged againſt him the ſame Term. 2 *Inſt.* 243.

But if the Demurrer is adjourned to another Term, it is peremptory, and there ſhall be Judgment againſt the Tenant. 2 *Inſt.* 243.

(C) Revoucher.

IF the Sheriff upon the Summons returns the Vouchee to be dead, the Voucher afterwards may vouch another of the Blood of the firſt Vouchee.

So, if it is returned upon the *Capias ad Valentiam* againſt the Vouchee, or upon the *Petit Cape* upon his Default.

So, if the Cauſe of Voucher be traverſed, where the Cauſe ought to be ſhewn, the Tenant may waive and vouch another immediately.

(D) What

(D) What Proceſs ſhall be againſt a Vouchee.

THE Vouchee may appear *Gratis*, and enter immediately into Warranty.

If he does not appear, a Summons *ad Warrantizandum* goes againſt him. *Co. L.* 101. *b.*

If upon the Summons the Sheriff returns *Nihil*, an *Alias* and *Pluries* go. *Co. L.* 101. *b.*

If he does not appear upon the *Pluries*, a *Sequatur ſub ſuo Periculo*. *Co. L.* 102. *a.*

And the Tenant muſt procure the Vouchee to appear, otherwiſe there ſhall be Judgment for the Demandant againſt the Tenant for Failure of his Voucher. *Co. L.* 102. *a.*

If, upon Summons, *&c.* the Sheriff returns, *That he has ſummoned*, and the Vouchee does not appear, a *Grand Cape ad Valentiam* goes againſt him. *Co. L.* 101. *b.*

If *Nihil* be returned, and ſtill he does not appear; an *Alias Grand Cape*, *Pluries*, and *Sequatur ſub ſuo Periculo*. *Co. L.* 101. *b.*

If the Tenant does not yet appear, there ſhall be Judgment againſt the Tenant for the Demandant, and alſo for the Tenant to recover in Value againſt the Vouchee. *Co. L.* 101. *b.*

So, if the Vouchee appears and afterwards makes Default, a *Petit Cape ad Valentiam* goes againſt him, and upon his ſecond Default, Judgment againſt the Tenant, and for the Tenant againſt the Vouchee. *Co. L.* 101. *b.*

There ought to be nine Returns between the *Teſte* and Return of the Summons *ad Warrantizandum*. 2 *Inſt.* 240.

(D. 2.) If he be an Infant.

If the Vouchee be an Infant, the *Parol* ſhall demur till his full Age. 2 *Inſt.* 245.

If the Tenant alledges him to be an Infant, and the Demandant ſays otherwiſe, a Summons *ad Viſum* goes.

And if *Nihil* is returned, and he does not appear, an *Alias*, *Pluries*, and *Sequatur ſub ſuo Periculo*, and if the Vouchee does not yet appear, there ſhall be Judgment for the Demandant.

If the Vouchee appears, and is adjudged upon the View to be of full Age, a Summons *ad Warrantizandum* goes againſt him, and upon *Nihil*, *an Alias*, *Pluries*, *& Sequat'*, *&c. ut Supra*.

(D. 3.) If he be a Foreigner.

How it ſhall be, if the Vouchee lives out of the Juriſdiction of the Court, where the Plea is depending: As, if it is in *London*, a County *Palatine*, *&c.* *Vide Poſt*, (H.)

(E) Count againſt a Vouchee.

WHEN the Vouchee enters into Warranty, he ſtands in the Place of the Tenant, and the Demandant counts againſt him, as againſt the Tenant. 2 *Inſt.* 241.

(F) Pleas by him.

(F. 1.) In Abatement.

SO the Vouchee may plead, as the Tenant may.

As, he may plead in Abatement, That the Demandant took Husband after the last Continuance, or is Outlawed, Excommunicated, *&c.*

So the Vouchee may plead in Bar, all Pleas *in Esse* at the Time of the Voucher. (F. 2.) *In Bar.*

(G) Judgment.

IF the Vouchee, after Plea of Nothing by Descent, and Issue thereupon, makes Default, at *Nisi prius*, Judgment may be against the Tenant, or conditional against the Vouchee, if he has an Estate in the said County, and, if not against the Tenant. *R.* 2 *Cro.* 618. *Dub.* how it shall be. *Cro. El.* 46.

(H) Foreign Voucher.

IF the Plea be in *London*, where the Tenant vouches to Warranty One in a foreign County, by the *St. Glo.* 12. and 9 *Ed.* 2. the Demandant shall have a Summons *ad Warrantizandum* against the Vouchee returnable in *C. B.* and the Record shall be removed thither by *Recordare*, and the Mayor and Bailiffs, being required by the same Writ, shall give Day to the Parties to appear there at the Return of the Writ, and, after the Warranty determined, the *C. B.* remands the Record, and the Vouchee shall be commanded to Answer there the Plea in Chief. 2 *Inst.* 324.

And, if the Demandant recovers, the Tenant shall have a Writ in *B.* to the Mayor and Bailiffs to extend hss Land, and return the Extent to *B.* and then he shall have a Writ to the Sheriff of the County where the Vouchee was summoned, that he cause him to have of the Land of the Warrantor *ad Valentiam.* 2 *Inst.* 324.

And there shall be the same Remedy, where a Foreigner is vouched, in *Chester*, *Durham*, Courts of *Antient Demesne*, *&c.* 2 *Inst.* 325.

And where any foreign Plea is pleaded, upon which the Court cannot proceed. 2 *Inst.* 325.

By the *St.* 9 *Ed.* 2. the Statute of *Glo.* 12. is altered, so that the Record shall be removed from *London* to *C. B.* and the Justices there summon the Vouchee before them, and the Pleading shall be there; and if the Tenant does not appear there shall be a *Petit Cape* to the Mayor to give Judgment against him, if he cannot save his Default. 2 *Inst.* 325.

If the Tenant vouches *A.* in *London* and *B.* in a foreign County, the Record shall be removed in *Toto*, for Process must be against all the Vouchees at the same Time, and, when the Warranty is determined, it shall be remanded *pro Toto.* 2 *Inst.* 326.

In *C. B.* the Justices may proceed to determine the Warranty. 2 *Inst.* 326.

And, if the Vouchee vouches over, award Process against the Vouchees *toties quoties.* 2 *Inst.* 326.

So the Tenant may be essoined in *B.* and the Demandant, if he makes Default, nonsuited. 2 *Inst.* 326.

If Husband and Wife vouch, and the Husband makes Default, the Wife may be received in *C. B.* *Semb.* 2 *Inst.* 326.

But none shall plead in Chief, except in the Inferior Court. 2 *Inst.* 326.

And after Warranty determined, there shall be a *Procedendo.* 2 *Inst.* 326.

After the Plea determined againſt the Tenant in the Inferior Court, the Tenant may ſurmiſe, that Execution is ſued againſt him, and pray a *Venire facias Recordum*. 2 *Inſt*. 326.

And thereupon the Juſtices of *C. B.* award an *Extendi et appreciari facias* againſt him to the Mayor, *&c.* 2 *Inſt*. 326, 7.

Vide more concerning *Voucher in Abatement*, (I 28.)——*Courts*, (O. 2)—*Eſtates* (B. 28.)——*Garranty*, (K. 2.)——*Pleader*, 2 Y. 18.——3 A. 6.—3 E. 5.)

USAGE.

Vide Admiralty, (E. 13)—*Copyhold*, (S. 1, &c.)—*Ireland*, (F.)—*Præſcription*, (E. 2.)

—— of Parliament.

Vide Parliament, (G. 1, &c.)

USES.

(A) Uſes; By the Common Law.

AN Uſe by the Common Law was a Truſt repoſed in him, who had the Eſtate of the Land, that *Ceſtui que Uſe* might take the Profits. *Co. L.* 272. *b.* 2 *Leo.* 15. 1 *And.* 318.

And was not iſſuing out of the Land, but collateral to it, and annexed in Privity to the Eſtate of the Land, and the Perſon of him, who had the Eſtate. *Co. L.* 272. *b.* 1 *Co.* 121. *b.*

And therefore no Remedy by Action, or otherwiſe, was given for it by the Common Law. 1 *And.* 318.

All Uſes were *in Eſſe*, in Poſſeſſion, Reverſion, or Remainder, or in Contingency, which by Poſſibility might come *in Eſſe* upon a Contingency. 1 *Co.* 121. *b.* *Vide Poſt.* (K. 5, 6.)

And to every Uſe there were two Incidents inſeparable, *viz.* 1. Confidence in the Perſon, expreſs or implied. 2. Privity in Eſtate, expreſs or implied. 1 *Co.* 121. *b.*

So, all Inheritances local, as Lands, Rents *in Eſſe*, Liberties and Franchiſes viſible and local, may be conveyed to an Uſe. *Jon*, 127.

Liberty of *Retorna Brevium*. *Jon.* 118.

So an Advowſon in *Groſs*, Common for ſo many Cattle. *Jon.* 118.

But perſonal Inheritances, which have no Relation to Lands or Hereditaments Local, cannot be conveyed to an Uſe. *Jon.* 127.

As an Annuity, Office of Truſt which requires perſonal Service, a Way, Authority, *&c.* *Jon.* 127.

Uſes at the Common Law were, in ſome Reſpects, as Chattels; for they paſſed by Deviſe. 1 *Co.* 121. *Vide Deviſe*, (A.)

So they paſſed by a Grant of all Hereditaments; for it was a deſcendible Inheritance. *Al.* 14, 15.

A Feoffment by Tenant in Tail, of an Uſe, gave an Eſtate only for his own Life. *Mo.* 39.

So

So, by the Common Law, an Uſe, tho' ſuſpended, might be deviſed: As, if *A.* and three others were ſeiſed to the Uſe of *A.* tho' as to a 4th Part the Uſe was ſuſpended, yet *A.* might deviſe the Whole; for when he dies, his Part, as to the Poſſeſſion, goes to the Survivors. 1 *Leo.* 257. *Vide Deviſe*, (A.)

So, if Feoffees to an Uſe were diſſeiſed, *Ceſtui que Uſe* might deviſe, *That the Feoffees enter and convey to B.* 1 *Leo.* 257.

And to avoid Miſchiefs by ſecret Conveyances to an Uſe, by the *St.* 1 *R.* 2. 9. enlarged by the *St.* 4 *H.* 4. 7. and explained by the *St.* 11 *H.* 6. 3. An Action was given to the Diſſeiſee, againſt the *Pernor* of the Profits, who was *Ceſtui que Uſe.* 1 *Co.* 123. *a.*

And tho' by thoſe Statutes it was enacted, That the Writ againſt the *Pernor* ſhould not abate for *Non-tenure*; by Equity it was extended, that it ſhould not abate by Plea of Joint-tenancy, or Diſclaimer. 1 *Co.* 131. *a.*

So by the *St.* 1 *H.* 7. 1. A *Formedon* was given againſt the *Pernor* of the Profits.

And this extends to a *Scire facias* to execute an Eſtate-Tail in Remainder. 1 *Co.* 131. *b.*

By the *St.* 4 *H.* 7. 17. and 19 *H.* 7. 15. Feoffments to Uſes are made void, which defraud the Lords of Wards, Reliefs, Heriots, Purchaſes made by their Villeins, *&c.* or others, of their Executions.

And by the *St.* 1 *R* 3. 1. which was more general, All Feoffments, Grants, *&c.* by *Ceſtui que Uſe* are confirmed againſt him and his Feoffees. *R.* 1 *And.* 29.

So againſt a Diſſeiſor of his Feoffees. 1 *Co.* 131. *b.*

So Grants of Rent by *Ceſtui que Uſe* are confirmed. 1 *Co.* 131. *b.*

Executions by *Elegit.* 1 *Co.* 131. *b.*

Grants, or Feoffments by him after a Conveyance to him by the Diſſeiſor of his Feoffees. 1 *Co.* 131. *b.*

(B. 1.) Since the Statute 27 H. 8. 10.

BUT, to avoid Miſchief by ſubtle and clandeſtine Uſes, the *St.* 27 *H.* 8. 10. enacts, that where any Perſons ſhall be ſeiſed of any Lands, or other Hereditaments to the Uſe, Confidence, or Truſt of any other, by reaſon of any Bargain, Sale, Feoffment, Fine, Recovery, Covenant, Agreement, Will, or otherwiſe, All ſuch Perſons, who have ſuch Uſe, Confidence, or Truſt in Fee, Tail, for Life, Years, or otherwiſe, or in Reverter, or Remainder, ſhall be adjudged in lawful Seiſin and Poſſeſſion of the ſame Lands, *&c.* in ſuch like Eſtates as they had or ſhall have in the Uſe, *&c.* And the Eſtate, Poſſeſſion, *&c.* of him, ſeiſed to the Uſe, ſhall be adjudged in him that hath the Uſe, after ſuch Quality, Form, and Condition, as he had in the Uſe.

And therefore, by this Statute, all Uſes, were intended to be extirpated. 1 *Co.* 125.

And the Means, intended for the Extirpation of Uſes, was the Execution of the Poſſeſſion to the Uſe.

And therefore in all Conveyances of Lands, Tenements or Herediments to the Poſſeſſion ſhall be executed to the Uſe.

And this, where the Uſe is created of a Rent ſince the Statute, as well as of a Rent *in Eſſe* before. *R. Dy.* 362. *b.* *Bend. pl.* 299. 1 *And.* 51, 52.

(B. 2.) What Uſes are executed by the Statute.

But to every Uſe executed within this Statute four Things muſt concur, *viz.* 1: A Perſon ſeiſed to the Uſe. 2. *Ceſtui que Uſe in Eſſe.* 3. An Uſe *in Eſſe.* 4. Transferring of the Eſtate out of which the Uſes ariſe to the *Ceſtui que Uſe.* 1 *Co.* 126. *a.* 136. *a.*

And

And therefore, if the Eſtate of the Feoffees was deveſted by Diſſeiſin, or Alienation, to ſuch as could not be ſeiſed to the firſt Uſes, thoſe Uſes cannot be executed, till Re-entry of the Feoffees, or Recovery by them. 1 *Co.* 126.

And, if their Entry or Action was barred, they can never be executed. 1 *Co.* 126. *b.*

So, if *Ceſtui que Uſe* had made a Feoffment, the Right to the Uſe cannot be executed till Re-entry by the Feoffees. 1 *Co.* 126. *a.*

So a future or contingent Uſe cannot be executed till it comes *in Eſſe*. 1 *Co.* 126. *a.* 136. *a.*

For all Uſes *in Eſſe* are executed immediately, and when the Contingency happens, a Poſſibility of Entry, or *quaſi Scintilla Juris*, remains in the Feoffees, which will ſerve for ſuch future Uſe. 1 *Co.* 129. *b.* 130. *b.* *Dy.* 340. *b.*

So no Uſe ſhall be executed, which is limited contrary to the Rule of the Common Law: As, if it is limited to *A.* for Years, Remainder to the right Heirs of *B.* for a Freehold cannot be in *Abeyance*. *R.* 1 *Co.* 130.

Or, if an Uſe in Remainder is Contingent, and the particular Eſtate fails before the Contingency happens. 1 *Co.* 130. *Vide Eſtates*, (B. 13, &c.)

Or, if an Uſe is limited in Tail, with a Proviſo that he ſhould not ſuffer a Recovery, *&c.* which is repugnant. 1 *Co.* 130. *a.* 138. *a.* *Vide Condition*, (D, 5.)

If an Uſe is limited to the Heirs of *B.* and no particular Eſtate to ſupport it in the mean Time. *R.* 4 *Mod.* 154. *Ca. Parl.* 104. *Vide Eſtates*, (B. 13, &c.)

So, where a Term for Years is granted to the Uſe of another, the Uſe cannot be executed by the Statute; for the Grantee is not ſeiſed. *Dy.* 369. *a.* 1 *And.* 294.

So, if a Termor makes a Leaſe for a leſs Number of Years, and afterwards grants the Reverſion of the Term, Nothing paſſes without Attornment; for the Uſe cannot be executed by the Statute, tho' it was upon a valuable Conſideration. *R.* 2 *Jon.* 217, 232.

(C) How raiſed.

USES are raiſed by Tranſmutation of the Poſſeſſion: As, upon a Fine, Feoffment, Common Recovery, *&c.* *Co. L.* 271. *b.*

Or out of the Eſtate of the Owner of the Land: As, by Bargain and Sale. *Co. L.* 271. *b.* *Vide Bargain and Sale*, (B. 1, *&c.*)

By Covenant, upon good Conſideration, to ſtand ſeiſed, *&c.* *Co. L.* 271. *b.* *Vide Covenant*, (G. 1, *&c.*

So, by Will; for a Man may deviſe Lands to the Uſe of another. *R.* 1 *Leo.* 253, 4. *Vide Deviſe*, (I)

But an Uſe cannot be raiſed upon an Uſe. 1 *Leo.* 6, 148. *Vide Bargain and Sale*, (B. 3.)

(D) How declared.

(D. 1.) What ſhall be a ſufficient Deed for it.

AN Uſe cannot be declared by *Parol* without Deed or other Writing: And therefore a Bargain and Sale, or Covenant to ſtand ſeiſed, *&c.* is not good without Deed. *Vide Bargain and Sale*, (B. 4.)—*Covenant*, (G. 1.)

So the Uſe of a Fine, Recovery, or Feoffment, cannot ariſe to a Stranger by *Parol*, except in ſpecial Caſes.

So a Fine upon *Grant and Render* cannot be averred to be to another Uſe than it imports, without Writing. 2 *Co.* 75. 76. *a.*

So

So a Fine of a Rent cannot be declared to the Uſe of a Stranger without a Deed. *R.* 2 *Rol.* 788. *l.* 27.

And now by the *St.* 29 *Car.* 2. All Declarations of Truſt of any Lands ſhall be manifeſted and proved by Writing, ſigned by the Party having Power to declare ſuch Truſt.

And therefore an abſolute Deviſe to *A.* ſhall not be averred to be made upon Truſt for a ſuperſtitious Uſe. *R.* 1 *Sal.* 162. *Vide Poſt,* (D. 2.)

But a Deed indented, or Poll, precedent to the Fine, Recovery, *&c.* is ſufficient to declare the Uſes thereof.

So, if a Man makes a Feoffment to the Uſe of ſuch Perſon, and for ſuch Eſtate, as he ſhall declare by his Will, his Will is ſufficient to declare the Uſes. *Co. L.* 111, 112. *R.* 1 *Vent.* 194.

So, if a Deviſe be to *B.* to the Uſe of *D.* the Will is ſufficient to guide the Uſe. *Mo.* 107. *Poph.* 4. 2 *Vent.* 312. *Vide Poſt,* (D. 2.)

If the Deviſe is to *A.* and *B.* and their Heirs, to the Uſe and Intent that they permit *G.* to take the Profits for his Life, and, after his Death, that they ſtand ſeiſed to the Uſe of the Heirs of the Body of *G.* it will be a Uſe executed in *G.* in Tail. *R. Lut.* 824. *Sal.* 679.

So, if a Man deviſes Land by his Will, and afterwards makes a Feoffment to the Uſe of ſuch Perſons, and for ſuch Eſtates, as he has declared by his Will, tho' the Feoffment is a Countermand of the Will, yet it is ſufficient to declare the Uſes of the Feoffment. *R. Mo.* 786. 3 *Ca. Ch.* 100.

So, if a Lord of a Manor releaſes to his Copyholder and his Heirs, to the Uſe of *B.* this Releaſe is ſufficient to declare the Uſe; for a Rent might be reſerved upon it. *R.* 2 *Rol.* 788. *l.* 35.

So, if a Man covenants to make an Aſſurance by Fine, Feoffment, *&c.* which ſhall be to the ſame Uſes; a Fine, *&c.* afterwards, without a new Agreement, ſhall be to the Uſes of the Covenant: tho' by the Deed, in which the Covenant is, it was to *B.* and his Heirs upon Condition, and the Feoffment or Fine is to him and his Heirs, generally, which imports an abſolute Eſtate. *R. Cro. El.* 300.

So, if there be a Deed between an Huſband of the one Part, and his Wife of the other Part, agreeing that a Fine ſhall be levied to ſuch Uſes, it is ſufficient to declare the Uſes; for it is a Deed Poll. *R.* 4 *Mod.* 264, 267.

So every Writing which ſhews the Agreement and Intent of the Parties. 4 *Mod.* 264. *Ca. Parl.* 145.

As, a Covenant to levy a Fine of all his Land, which for 24 Acres ſhall be to the Uſe of *B.* and he afterwards levies a Fine of 24 Acres of Land only. *Dub.* 2 *Rol.* 791. *l.* 25.

A Deed, tho' it be afterwards eraſed, and the Seals torn off, by Accident. *Lut.* 226.

A Deed of Bargain and Sale, or Feoffment, tho' no Inrolment or Livery enſues. 4 *Mod.* 264.

So the Uſes of a Fine, *&c.* may be declared by a Deed ſubſequent to the Fine. *Dy.* 136. *a.* *Cont. Cro. El.* 218. *R. acc.* 9 *Co.* 10. 15. *a.* *Mo.* 192. *R.* 2 *Rol.* 782. *G.* 1 *And.* 125.

And tho' a ſubſequent Deed declares the Intent of the Parties to be that a Fine ſhall be levied to ſuch Uſes, it is ſufficient, tho' it does not expreſſly ſay, that it was the Intent at the Time of the Fine, *&c.* *Semb. cont. Mo.* 192.

And tho' by the *St.* 29 *Car.* 2. 3. it is enacted, That all Declarations of Truſt, *&c.* ſhall be manifeſted in Writing; yet Uſes and Truſts may be declared by a ſubſequent Deed by the *St.* 4 *&* 5 *An.* 16.

So there may be an Information for the Diſcovery of a Truſt by *Parol* to ſuperſtitious Uſes; for the *St.* 29 *Car.* 2. does not bind the King. *R.* 1 *Sal.* 162.

So, if a Deed be to declare the Uſe of a Fine, which varies in ſome Circumſtances, yet it ſhall be to the ſame Uſes by Conſtruction of Law, if Nothing appears that it was to another Intent. *Ca. Parl.* 144. *R.* 5 *Co.* 26. *b.*

So, if the Uſe of a Fine be declared by a Deed precedent, which agrees in Time, Parties, Quantities, and other Circumſtances, no Averment ſhall be admitted that it was to other Uſes. *Ca. Parl.* 144. *R.* 5 *Co.* 26. *b.*

But, if the Feoffor, Conuſor, *&c.* after the Fine, *&c.* and before a ſubſequent Deed to declare the Uſes, makes any mean Eſtate, or Incumbrance, it ſhall not be avoided by ſuch ſubſequent Declaration, without Proof, that the Fine was intended to the ſame Uſes. *R.* 9 *Co.* 11. *a.*

So, if the Declaration of Uſes be by Deed ſubſequent, the Fine may be averred to be to other Uſes. *R.* 9 *Co.* 11. *a. Ca. Parl.* 144.

So, if it be by Deed precedent, where the Fine varies, in Time, Number of Acres, or other Circumſtances, from the Deed. *R.* 2 *Cro.* 29. 5 *Co.* 26. *b. Mo.* 723.

So, if there be a precedent Deed to declare the Uſes of a Fine, *&c.* and it varies in Quantity of Acres, any of the Parties, Time of Levying, or like Circumſtances; it may be averred by *Parol* to be to the ſame Uſes. *R.* 2 *Co.* 76. *a.*

If the Deed be that a Fine ſhall be levied to four Perſons, and two die, and it is levied to the Survivors, it ſhall be to the ſame Uſes. *R.* 2 *Rol.* 799. *l.* 25.

So, if a Common Recovery be ſuffered *Oct' Mich'*, and by Indenture 14 *Nov.* it is declared that all Recoveries hereafter to be ſuffered ſhall be to ſuch Uſes; this is not ſufficient to lead the Uſes of a Recovery *before* in the ſame Term (tho' all the Term in Law is but one Day) without an Averment that ſuch was the Intent. *R.* 2 *Rol.* 799. *l.* 10.

The Declaration of a Uſe is but the Direction of a Truſt. *Mo.* 610.

And ſuch Writing, Words, or Circumſtances, as manifeſt the Intent and Mind of the Feoffor, are a ſufficient Declaration of a Uſe. *Mo.* 610. *Vide Poſt*, (L. 3.)

As, if upon a Feoffment to *A.* and *B.* they by another Deed agree that after 100 Years the Feoffor and his Heirs ſhall have it again; this is ſufficient to declare the Uſe to the Feoffor after 100 Years. *R. Mo.* 723.

[If a Father, Tenant for Life. and Son in Tail, with Remainders over, on an Advantageous Marriage for his Son an Infant, join in executing Articles, whereby the Father covenants, that, after the Son's coming of Age, they will join in Fine and Recovery of the Eſtate to divers Uſes, and they accordingly join in ſuch Fine and Recovery; the Son's executing theſe Articles is not ſufficient to declare the Uſes of Fine and Recovery. *Nightingale* v. *Earl Ferrers*, *M.* 1733. 3 *P. W.* 206.]

(D. 2.) To what Uſe it ſhall be, when there is no Declaration.

If a Fine is levied and no Uſe declared nor Conſideration paid, it ſhall be to the Uſe of the Conuſor. 2 *Rol.* 781. *l.* 42.

So, if a Common Recovery is ſuffered, it ſhall be to the Uſe of him, who ſuffers the Recovery. *Dy.* 146. *b.* 2 *Rol.* 781. *l.* 40. 789. *l.* 47. *D.* 9 *Co.* 8. *b.*

So, ſince the *St. Quia Emptores Terrarum*, a Feoffment, without a Uſe declared or Conſideration paid, ſhall be to the Uſe of the Feoffor. 2 *Rol.* 781. *l.* 35. *R. Dy.* 146. *b. Acc.* 2 *Lev.* 77.

Tho' Tenant for Life, and He in Remainder in Tail, join in a Feoffment to *A.* and his Heirs to make him a Tenant to the *Præcipe*. *R. Pal.* 359.

Or, if Tenant for Life ſurrenders to him in Remainder in Tail, to make him Tenant to the *Præcipe*, *R. Pal.* 359.

Or Tenant in Tail levies a Fine to *A.* and his Heirs for ſuch an Intent, and ſeven Years after ſuffers a Recovery without declaring the Uſe. *R. Eq. R.* 16.

And it ſhall be to *A.* and his Heirs till the Recovery, without any Uſe declared by the *St.* 29 *Car.* 2. 3. for the Intent appears by the Voucher. *R. Eq. R.* 17.

And

And a Fine, Recovery, or Feoffment, ſhall be to the Uſe of the Feoffor, *&c.* in the ſame Plight, and for the ſame Eſtate, as he had before; As, if two Jointenants levy a Fine, *&c.* it ſhall be to their Uſe jointly. 2 *Co.* 58. *a.*

If Tenant for Life and he in Reverſion levy a Fine, it ſhall be to the one for Life, to the other in Fee. 2 *Co.* 58. *a.*

So, if he ſuffers a Recovery. *R. Pal.* 405. *Lat.* 82. *Noy* 77.

So, if the Owner of the Land, and a Stranger, join in a Fine, the Uſe ariſes wholly to the Owner, and Nothing to the Stranger. 2 *Co.* 58. *b.* *R.* 2 *Rol.* 789. *l.* 50.

So, if Huſband and Wife, of the Wife's Land, it ariſes wholly to the Wife. *R.* 2 *Co.* 58. *b.* *Vide Baron and Feme*, (G. 1.)

So, if the Uſe declared is void or impoſſible, it ſhall be to the Uſe of the Feoffor; As, a Feoffment to the Uſe of *A.* and there is no ſuch Perſon in *Rerum Natura*. *Dal.* 112.

So a Fine *Sur Grant and Render*, if the Uſes upon the *Render* are void *in toto*, ſhall be to the Uſes to which the *Render* is intended. *Mo.* 488.

A Feoffment to the Uſes mentioned in ſuch an Indenture, and there is no ſuch Indenture, ſhall be to the Uſe of the Feoffor. *Dal.* 112.

But, if Tenant in Tail, Remainder to himſelf in Fee, levies a Fine, without declaring the Uſe, it ſhall be to himſelf in Fee.

So, if Tenant in Tail, Remainder to *B.* in Fee, ſuffers a Recovery, without declaring the Uſe, it ſhall be to him in Fee; for he had a Power to do it, and it ſhall be intended to that Intent. *Pol.* 526. *R. P.* 8 *An. Ld. Altham* and *Angleſey*. *Eq. R.* 16.

And the Uſe follows the Nature of the Land, ſince the *St.* 27 *H.* 8. 10. as well as before. *R.* 1 *Co.* 127. 2 *Co.* 58. 2 *Rol.* 780. *l.* 26.

And therefore the Uſe of Land of the Nature of *Borough Engliſh* ſhall deſcend to the youngeſt Son. 2 *Rol.* 780. *l.* 28.

So, if the Land was of the Nature of *Gavelkind*, he ſhall be afterwards ſeiſed in the ſame Manner; for the Uſe follows the Nature of the Land. 2 *Rol.* 780. *l.* 30.

If the Feoffor was ſeiſed of the Land, as Heir of the Part of his Mother. *Co. L.* 13. *a.* *Vide Diſcent*, (C. 6.)

So, if an Uſe be declared upon a Contingency, the Uſe in the mean Time ſhall be to the Feoffor, *&c.* As, if a Man makes a Feoffment, and declares that after a Marriage between him and *A.* it ſhall be to the Uſe of him and his Wife and to his Heirs, the Uſe is to him and his Heirs, as before, till the Marriage. *R.* 2 *Rol.* 791. *l.* 35. *Pol.* 58.

So, if the Feoffment be to the Uſe of his Will, or to the Uſe of ſuch a Perſon as he ſhall appoint by his Will, the Feoffees are ſeiſed to the Uſe of the Feoffor and his Heirs in the mean Time. *Co. L.* 271. *b.* *Pol.* 58.

So, if the Feoffment be to the Uſe of ſuch a One for Life, or for Years, *&c.* the Uſe of the Inheritance ſhall be to the Feoffor. *Co. L.* 271. *b.*

Or, to the Uſe of *A.* for Life, Remainder to *B.* in Tail, the Uſe of the Fee ſhall be to the Feoffor. *Pol.* 58.

But, if Feoffees were ſeiſed to Uſes, and before the *St.* 27 *H.* 8. 10. had levied a Fine or made a Feoffment, *&c.* the ſecond Feoffees, having Notice, ſhall be ſeiſed to the firſt Uſes. *Pl. Com.* 351. *a.* 1 *Co.* 122. *b.*

Tho' the Feoffment, *&c.* was made to them upon a valuable Conſideration. *Pl. Com.* 351. *a.* 3 *Co.* 81.

So, if they had not Notice, where the Feoffment was without Conſideration. 3 *Co.* 81. *b.* *Pl. Com.* 351.

Or upon Conſideration of Blood, *&c.* and not for Money. 3 *Co.* 81. *b.* 2 *Rol.* 779. *l.* 17.

Tho' the Feoffment was to *Ceſtui que Uſe* himſelf: As, if the Feoffment was to *A.* and his Heirs Male of his Body, Remainder to *B.* in Fee, and the Feoffees enfeoff *A.* (being conuſant of the Uſes) to the Uſe of himſelf and the Heirs of his Body, and *A.* dies without Heir Male, his Heir General ſhall be ſeiſed to the Uſe of *B.* in Fee, *R. per all J. Kel.* 93. *a.* 2 *Rol.* 781. *l.* 25.

So,

So, if *A.* covenants to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to his Son for Life, with ſeveral Remainders in Tail, Remainder to his right Heirs, and after reciting the Uſes, without Conſideration grants his Reverſion in Fee to *B.* to the Uſe of *B.* and his Heirs, *B.* ſhall be ſeiſed to the firſt Uſes, ſince the *St.* 27 *H.* 8. 10. as before, having Notice, *&c.* *R.* 2 *Rol.* 796. *l.* 5.

Yet, where Feoffees to an Uſe make a Feoffment to Others, not having Notice, upon a valuable Conſideration, the ſecond Feoffees are not ſeiſed to the firſt Uſes. 1 *Co.* 122. *b.*

So, if the Feoffment was to three, of whom two were conuſant of the firſt Uſes; but the third was not. *Per* 2 *J. Hob.* 350. but the two conuſant ſhall anſwer in Equity. *Hob.* 350.

So, if the Feoffment was to Others, having Notice, they are not ſeiſed to the firſt Uſes, where the firſt Uſes were raiſed without Conſideration, or upon Conſideration of Blood only. 3 *Co.* 81. *b.* 2 *Rol.* 779. *l.* 22.

So, if the Feoffment was to Others, having Notice, and expreſſly limited to their Uſe, they are not ſeiſed to the firſt Uſe.

So a Gift in Tail ſhall be to the Uſe of the Donee, tho' no Uſe or Conſideration be expreſſed. *Dy.* 146. 2 *Rol.* 781. *l.* 47.

So a Leaſe for Life, or Years, ſhall be to the Uſe of the Leſſee. 2 *Rol.* 781. *l.* 50.

So an Aſſignment of a Leaſe ſhall be to the Uſe of the Aſſignee; for a Conſideration is implied; As, Payment of Rent to him in Reverſion, *&c.* *R.* 2 *Rol.* 781. *l.* 55.

So, if Part was expreſſed to be to the Uſe of the Grantee, and Nothing ſaid as to the other Part, the Whole ſhall be to the Uſe of the Grantee. *R.* 2 *Rol.* 782. *l.* 5.

So, if a Fine *Sur Grant et Render* was to *B.* with a *Render* to *A.* in Tail, and Nothing ſaid of the Fee, it was to the Uſe of the Conuſee. *R. Mo.* 46, 488.

So, if a Recovery was to the Intent they ſhould convey, it ſhould be to the Uſe of the Recoverors in the mean Time. *R. Mo.* 103.

So, before the *St. Quia Emptores Terrarum*, a Feoffment, without Uſe or Conſideration, was to the Uſe of the Feoffee in reſpect of his Tenure of the Feoffor. *Dy.* 146.

So a Fine *Sur Grant et Render*, upon the Acknowledgment, ſhall be to the Uſe of the Conuſee, otherwiſe there can be no *Render*. *R. Mo.* 488.

If the *Render* be to *A.* for Years and then to the firſt, ſecond, *&c.* Sons in Tail, which Remainders are void for Want of a Freehold, the Uſes after the Term to *A.* ſhall be to the Conuſee. *R. Mo.* 488.

So a Deviſe to *A.* and his Heirs generally ſhall be to the Uſe of the Deviſee, and cannot be averred to be to another Uſe. *Semb.* 1 *Sal.* 162. *Vide Ante*, (D. 1.)

So a Deviſe to *A.* and his Heirs for the Life of *B.* upon Truſt to permit *B.* to take the Profits for Life, ſhall be a Truſt, not an Uſe executed in *B.* *R.* 2 *Vent.* 312.

(D. 3.) To what, when different Declarations.

If there be an Indenture to declare the Uſes of a Fine, to be levied, and afterwards another Agreement is made for the Uſes of the ſame Fine, by Writing, as high or higher, the laſt Agreement ſhall ſtand. 5 *Co.* 26. *a.*

As, if there be an Indenture to declare the Uſes of a Fin, and afterwards another Indenture for the ſame Purpoſe, the laſt Indenture ſhall direct the Uſe. *Mo.* 107. *R.* that it may be averred to be to the Uſe of the one Indenture, or the other. 2 *And.* 46.

If there be an Indenture 29 *Jan.* to declare the Uſe of a Fine, and there be a Deed 31*ſt Jan.* between Huſband and Wife, which declares other Uſes, the Fine ſhall be to the Uſe of the laſt Deed, where there was a Variance between the Fine and Indenture 29 *Jan.* *R.* 4 *Mod.* 261. *Ca. Parl.* 145.

Tho'

Tho' the Variance be, that it was levied before, as well as where it is after, the Time directed by the Deed. *R.* 4 *Mod.* 261. *Ca. Parl.* 145.

But, if a Man by Indenture covenants to make a Mortgage, and to levy a Fine to the Uſe of the Mortgagee, and before the Fine ingroſſed, by another Indenture agrees the Fine ſhall be to the ſame Uſe, with an Addition, That the Mortgagor ſhall take the Profits in the mean Time; this laſt Indenture does not revoke the firſt, tho' it neither recites nor mentions it, for both ſhall be taken as one Conveyance. *R.* 2 *Rol.* 793. *l.* 10.

So, if Huſband and Wife, Tenants for Life, and to the Heirs of the Huſband, make a Mortgage with a Proviſo, that upon Payment of 100 Pounds they ſhall re-enter, and that all Fines, *&c.* ſhall be to the Mortgagee till Payment, then to the Huſband and his Heirs, and a Fine was levied, then the Wife ſurvived and paid; the Fine ſhall be conſtrued to be to her Uſe, not to the Uſe of the Heir of the Huſband. *R. Cro. El.* 744.

So, if a Huſband and his Wife, who has a Jointure in the Land, levy a Fine in order to make a Building Leaſe, and that the Wife ſhall have the reſerved Rent for her Jointure; this, being for a ſpecial Purpoſe, does not extinguiſh her Jointure, nor ſubject it to a *Meſne* Charge made by the Huſband between the Jointure and Leaſe. *R. Skin.* 238.

[So if a Man ſeized to him, and the Heirs of his Body, Remainder to his right Heirs, by Leaſe and Releaſe conveys to Truſtees to the Uſe of himſelf for Life, Remainder to Truſtees to preſerve, *&c.* to his intended Wife for Life, to his firſt and other Sons by her; then marries, has Iſſue, ſuffers a Recovery, and by Deed declares the Uſes to be to *A. &c.* to ſell, and out of the Money to pay Debts, and to pay the Reſidue, or re-convey Lands unſold to himſelf and Heirs, and *A.* conveys to *B.*; *B.* has no Title, for the Recovery inures to the Uſe of the Settlement, and Tenant in Tail can convey a baſe Fee, not void, but voidable by the Iſſue in Tail. *Goodright* v. *Mead, T.* 5 *G.* 3. 3 *B. M.* 1703.]

(D. 4.) To what, when the Declaration is not by all Parties.

If two Joint-tenants levy a Fine, and only one declares the Uſes, it will be good for a Moiety only, except where the Other's Conſent to ſuch Declaration is proved. *Lat.* 82. *Pal.* 405. *Noy* 77.

So, if Tenant for Life, Remainder in Tail, ſuffers a Recovery, in which the Remainder-Man is vouched; if he does not join in the Declaration of the Uſes, he is not bound. *Lat.* 82. *Pal.* 405. *Noy* 77.

(E) Who may be ſeiſed to an Uſe.

ALL Perſons, capable of taking by Feoffment, may be ſeiſed to an Uſe.

(F) Who not.

BUT no one can be ſeiſed to an Uſe, who cannot execute an Eſtate to the Uſe: And therefore a Donee in Tail, before or ſince the *St.* 27 *H.* 8. 10. never can be ſeiſed to the Uſe of another. *Co. L.* 19. *b.* *R.* 2 *Co.* 78. *a.* *R.* 2 *Rol.* 780. *l.* 10, 15. 2 *Cro.* 401. 3 *Bul.* 184.

And, if a Gift be to him, *habendum* to him and the Heirs of his Body, to the Uſe of him and his Heirs, the Uſe ſhall be rejected. 2 *Cro.* 401. Or it will rather be a Limitation at Common Law, and not by way of Uſe, and the Word, *Uſe*, ſhall be rejected. *R. Cro. Car.* 231, 245.

So no One can be ſeiſed to an Uſe, againſt whom an Attachment does not lie out of *Chancery* to compel the Execution of the Uſe: And therefore a Corporation cannot be ſeiſed to an Uſe. 1 *Co.* 122. *D. M.* 9 *W.* 3. *Inter Jones and Moſely.* *(Reported in Comyns's Reports* 29.*)*

Nor the King. *Mo.* 374.

And therefore if a Leſſee in Truſt for *B.* is attainted of Treaſon, whereby the Term is forfeited, the King will not be ſubject to the Truſt. 2 *Rol.* 780. *l.* 5. *Dub. Hard.* 469.

If *A.* to whom a Bond, *&c.* is given in Truſt for *B.* becomes *Felo de ſe*, the King ſhall not be Truſtee. 2 *Hard.* 176.

So no One can be ſeiſed to an Uſe, who does not come in, in Privity of the Eſtate: As, a Diſſeiſor, Abator, or Intruder. 1 *Co.* 122. *a.* 139. *b.*

Tenant by the Curteſy or in Dower. 1 *Co.* 122. *a.*

So, if an Uſe be to *A.* for Life, Remainder to *B.* and *A.* makes a Feoffment to another, who has Notice of the Uſes, the Feoffee ſhall not be ſeiſed to the firſt Uſes; for he is not in, in Privity of the Eſtate of the Feoffor; but has another Eſtate. 1 *Co.* 122. *b.*

So Perſons, who claim *Paramount*, *&c.* cannot be ſeiſed to an Uſe: As, a Lord by Eſcheat. 1 *Co.* 122. *a.* 139. *b.* *All.* 14.

The Lord of a *Villein*, or who enters for *Mortmain*, or recovers in a *Ceſſavit*. 1 *Co.* 122. *a.*

So an Alien cannot be ſeiſed to an Uſe. 1 *Co.* 133. *a.*

Nor a Perſon attainted. *Ibid.*

(G) Who may give or take an Uſe.

YET a Corporation by Bargain and Sale may ſell Land; for they may give an Uſe, tho' they ſhall not be ſeiſed to an Uſe. *Vide Bargain and Sale*, (B. 3.)

So a Fine to *A.* with a Deed, which declares the Uſes to the King, is ſufficient to paſs an Eſtate to the King. 1 *Leo.* 33.

(H) What Intereſt the Feoffee to Uſe has in the Land.

FEOFFEES to Uſe muſt be ſeiſed of the Land, otherwiſe there can be no Execution of their Eſtate, Seiſin, and Poſſeſſion to *Ceſtui que Uſe*. *Vide Ante*, (B. 1, 2.)

So, if there be any future or contingent Uſe, a ſufficient Eſtate muſt remain in the Feoffees to preſerve ſuch future Uſe, when it comes *in Eſſe*. 1 *Co.* 129, 130, 137. *a.*

And if, by Diſſeiſin or otherwiſe, the particular Eſtate be put to a Right, before the Contingency happens, and the particular Tenant dies before Entry, the Feoffees after his Death may enter and revive the Eſtate. *R.* 2 *Rol.* 797. *l.* 20, 40. *Vide Eſtates*, (B. 13)

Or rather all the Eſtate is taken out of the Feoffees, to ſupply the Uſes, veſted, or when they come *in Eſſe*. *Pol.* 385, *&c.*

But the Feoffees are only Organs or Inſtruments to compleat the Conveyance, and their Seiſin continues only for an Inſtant. *Pol.* 393.

And therefore the Wife of the Feoffee, *&c.* ſhall not be endowed.

So, if the Feoffee be attainted for Treaſon or Felony, committed before the Feoffment, it ſhall not be forfeited to the King. *Semb. cont. Mo.* 196.

So by the *St.* 27 *H.* 8. 10. All Right, Intereſt, *&c.* of the Feoffee himſelf to the Eſtate is ſaved.

And therefore, if a Leaſe be to *A.* and *B.* in Truſt for another, and afterwards a Feoffment, *&c.* is made to *A.* and others of the ſame Land to Uſes, the Leaſe ſhall not be merged. *R. Mo.* 196.

If a Leſſee for Years be made Tenant of the Freehold, and Tenant to the *Præcipe* for a Common Recovery to an Uſe, his Term ſhall not be merged. *R.* 1 *Sal.* 241. *Acc.* 1 *Vent.* 195.

If a Leaſe for Years be made by Fine, to the Feoffee, by him who has a contingent Uſe in Remainder, it will be good; for no Uſe remains in the Feoffee, and when the Contingency happens, ſo much of the Eſtate only ariſes to him, as is

is ſufficient to convey the Uſe to him in Remainder, and the Leaſe is not diſturbed thereby. *R. Pol.* 64, 66, 393.

(I) What the Ceſtui que Uſe.

BY the *St.* 27 *H.* 8. 10. *Ceſtui que Uſe* is immediately ſeiſed and in actual Poſſeſſion. *Cro. El.* 46.

And therefore ſhall have Aſſiſe, or Treſpaſs againſt a Stranger, before Entry. *R. Cro. El.* 46.

(K) Limitation of Uſes.

(K. 1.) What Conſideration will be ſufficient.

TO a Limitation of Uſes, upon a Bargain and Sale, or Covenant to ſtand ſeiſed, there muſt be a ſufficient Conſideration.

What will be ſufficient, *Vide Bargain and Sale*, (B. 11.)

What upon a Covenant, *Vide in Covenant*, (G. 3, &c.)

But in a Conveyance which operates by Tranſmutation of the Poſſeſſion, as a Fine, Feoffment, *&c.* the Will of the Parties is ſufficient without other Conſideration; And therefore, if a Man in Conſideration of Blood, *&c.* levies a Fine to the Uſe of *B.* his Baſtard, it is ſufficient, in a Fine, to raiſe the Uſes to *B.* tho' he was a Baſtard. 2 *Rol.* 791. *l.* 15.

If a Man in Conſideration of Marriage levies a Fine, or makes a Feoffment to the Uſe of *A.* and *B. &c.* the Uſe will ariſe, tho' the Marriage does not take Effect. *R. Mo.* 102. *R.* 2 *Rol.* 792. *l.* 40. *R.* 1 *Leo.* 138.

If a Man in Conſideration of 100*l.* paid by *B.* makes a Feoffment to him, to the Uſe of him and *C.* it is ſufficient to raiſe a Uſe to *C.* tho' the whole Conſideration was given by *B.* 2 *Rol.* 791. *l.* 20.

If a Man upon a Feoffment, *&c.* declares the Uſe to the Feoffee, the Uſe ſhall be to him; tho' no Conſideration, and the Feoffor afterwards occupies for many Years. *R.* 1 *And.* 57. *Bend. pl.* 20.

(K. 2.) To whom an Uſe limited ſhall ariſe.

If a Man covenants with *B.* upon ſuch an Act to ſtand ſeiſed to *B.* and his Heirs, and *B.* dies before the Act performed, the Uſe ariſes to the Heir. *R.* 2 *Rol.* 794. *l.* 45. *Dub. Mo.* 548.

If the Limitation is to *A.* and ſuch Wife as he ſhall take, and he afterwards marries, the Uſe may well ariſe to ſuch Wife. *R. per* 3 *J. Dy. cont. Mo.* 96. *D. Mo.* 377.

If a Feoffment is declared by another Deed to be to the Intent that, after Feoffee has enjoyed for 100 Years, the Feoffor and his Heirs may enter; this amounts to a Declaration of Uſes to him and his Heirs, and after 100 Years the Heir may enter. *R. Mo.* 722.

If a Deviſe be to *A.* and his Heirs upon a Contingency, the Deviſor dies, the Contingency happens after the Death of *A.* his Heirs ſhall take. *Jon.* 59.

If a Feoffment be to the Uſe of *A.* for Life, Remainder to *B.* in Fee; if *A.* refuſes, the Uſe ſhall be to the Remainder-Man immediately. *R.* 1 *Co.* 154. *b.*

So, if a Man covenants to ſtand ſeiſed to the Uſe of *B.* for 24 Years, and after the Determination of the Term to *A.* if the Term does not ariſe for Want of a good Conſideration, *A.* ſhall take immediately. *R.* 1 *Co.* 154. *b. Mo.* 195.

But generally where a Man raiſes an Uſe by a Covenant to ſtand ſeiſed, if the Eſtate of one is void for Want of a good Conſideration, He in Remainder ſhall not take immediately; for each Eſtate ariſes upon it's own proper Conſideration: As, if a Man covenants to be ſeiſed to the Uſe of *B.* for Life, and after his Death

Death in Conſideration of 100*l.* to *A.* in Fee; if *B.* refuſes, or his Eſtate is void, *A.* ſhall not have it till his Death. *R.* 1 *Co.* 154. *b.*

So, if the Covenant be to the Uſe of *B.* for 24 Years, and after the End of thoſe Years to *A.* if the Eſtate for Years is void, *A.* ſhall not take till the 24 Years are expired. *R.* 1 *Co.* 154. *b.* 1 *Leo.* 195.

To the Uſe of *B.* till his Age of 21 Years, and after ſuch Age to *A.* if *B.* dies, *A.* ſhall not take till *B.* would have attained his Age of 21 Years. 1 *Leo.* 195.

(K. 3.) When it ſhall ariſe by the Feoffment, &c. or by a ſubſequent Deed.

If a Man makes a Feoffment, to the Uſe of ſuch Perſon as he by his Will ſhall appoint, the Uſe ariſes by the Feoffment, and the Will is only declaratory. *Co. L.* 271. *b.* *R.* 6 *Co.* 17, 18. *Mo.* 280, 567. 1 *Bul.* 200. *Vide Deviſe*, (O.)

And if he deviſes the Land by his Will, it will be a ſufficient Direction of the Uſes. *Dub. Mo.* 476.

But, if the Feoffment be to the Uſe of his Will, or to perform his Will, the Uſes are raiſed by the Will, and not by the Feoffment. *Co. L.* 271. *b.* *R. Mo.* 280. *Dub. Mo.* 476. *R.* 6 *Co.* 18. *a.*

So, if the Feoffment be to the Uſe of ſuch Perſon, and for ſuch Eſtate, as he ſhall by his Will appoint, and he deviſes the Land by his Will without Reference to his Power, where he has Authority to deviſe, as well as to diſpoſe by Declaration of the Uſes of the Feoffment, the Eſtate paſſes by his Will. *R.* 6 *Co.* 18. *a.* *Mo.* 280, 567. 1 *And.* 246.

(K. 4.) When it ſhall ariſe upon a Condition, &c. performed.

If *A.* Tenant in Tail, conveys to *B.* and his Heirs, who re-conveys to *A.* and his Heirs upon Condition of Entry, if *A.* does not pay 300*l.* at ſuch a Day, which was intended as a Security for the ſaid Sum and Intereſt, and afterwards *A.* ſuffers a Recovery, and deviſes to *D.* the Recovery operates upon the Eſtate re-conveyed to *A.* in Fee, not upon the Eſtate to *B.* *R.* 1 *Ch. R.* 97.

But, if an Uſe is limited upon an Impoſſibility, it ſhall never ariſe: As, if a Man covenants to ſtand ſeiſed to the Uſe of *B.* after the End of the Term which *A.* has in the ſame Land; if *A.* has not any Term, the Uſe ſhall never ariſe to *B.* 1 *Leo.* 195.

So, if an Uſe be limited upon a Contingency, which never happens, it will be void: As, if it is to *A.* if all his Brothers and their Iſſues die, and one Brother leaves Iſſue. *R.* 2 *Lev.* 157.

So, if an Uſe be limited to *A.* and ſuch Wife as he ſhall afterwards marry, for their Lives, the Wife, he ſhall afterwards marry, ſhall not take; for ſhe cannot take jointly with her Huſband, as the Words import. *R.* 1 *And.* 42.

So an Uſe will not ariſe by Implication. *Semb. Pol.* 94.

As, if an Eſtate be to *A.* for Life, and after the Death of *A.* and *B.* to *C.* no Uſe ariſes to *B.* by Implication. *Pol.* 94.

(K. 5.) What ſhall be a ſettled Uſe.

Vide Eſtates, (B. 16, 17, 18.)

All Uſes are *in Eſſe* in Poſſeſſion, Remainder or Reverſion, or in Contingency. 1 *Co.* 121. *b.*

If the Uſe is raiſed by the Feoffment, &c. and veſts in a certain Perſon, this will be a ſettled Uſe.

Tho' the Conſideration of the Feoffment was fortuitous: As, if a Man covenants in Conſideration of a Marriage with *B.* to make an Aſſurance to the Uſe of himſelf and *B.* &c. and afterwards makes a Feoffment and levies a Fine to the

the ſame Uſes, *B.* takes an Eſtate, tho' the Marriage does not take Effect. *R.* 2 *Rol.* 792. *l.* 40. *Vide ante*, (K. 1.)

(K. 6.) What a contingent Uſe.

But, if a Man levies a Fine of the Manors of *A.* and *B. viz.* of *A.* to the Purchaſer and his Heirs, of *B.* as a collateral Security for the Purchaſe, *viz.* to himſelf and his Heirs, till the Manor of *A.* be evicted, and, after Eviction, to the Purchaſer and his Heirs, the Uſe to the Purchaſor is contingent, and does not veſt till Eviction. *R.* 2 *Rol.* 792. *l.* 30.

If Grantor of a Rent of 20*l.* for Security of Payment levies a Fine to the Uſe, that, if the Rent be in Arrear, the Grantee may enter, if 10*l.* payable at *Michaelmas* is in Arrear, he may enter; for the Whole is in Arrear, when any Part is not paid at the Day. *R.* 2 *Rol.* 799. *l.* 35.

But, if the Fine is to the Uſe, that, if the Rent be in Arrear, and the Diſtreſs for it replevied, the Grantee may enter; and for Rent in Arrear before the Fine there is a Diſtreſs after the Fine, and it is replevied, the Grantee cannot enter. *R.* 2 *Rol.* 800. *l.* 10.

So, if a Bargainee covenants upon Payment of ſo much Money to ſtand ſeiſed, *&c.* the Uſe does not ariſe upon Tender and Refuſal, without actual Payment. *R. Mo.* 35.

(K. 7.) A ſpringing or reſulting Uſe.

If a Fine, Feoffment, *&c.* be to another without Conſideration, or no Uſe is declared, it ſhall be to the Uſe of the Feoffor, *&c.* *Vide ante*, (D. 2.) *Vide Executory Deviſe, in Deviſe.* (N. 16.)

If it be by one ſeiſed to other Uſes, and without valuable Conſideration, or upon valuable Conſideration with Notice of the former Uſes, it ſhall be to the firſt Uſes. *Vide ante*, (D. 2.)

If a Fine, Feoffment, *&c.* be to another upon valuable Conſideration, the Uſe reſults to the Feoffee, *&c.*

So, if a Man makes a Feoffment, *&c.* and declares the Uſe to himſelf and *A.* his Wife after their Marriage, the Uſe will well ariſe to *A.* upon ſuch Contingency, *viz.* that the Marriage ſhall take Effect; for till the Marriage the Uſe reſults to the Feoffor and his Heirs. *R.* 2 *Rol.* 791. *l.* 35.

So, if a Man covenants, in Conſideration of his Marriage with *A.* to ſtand ſeiſed to the Uſe of himſelf and *A.* till Marriage, the Uſe does not ariſe. *R.* 2 *Rol.* 792. *l.* 50. *Vide Covenant*, (G. 5.)

If a Man covenants to ſtand ſeiſed after his Death, the Uſe reſults to the Covenantor for Life, and does not ariſe to the Uſes limited till his Death. *Semb.* 1 *Co.* 154. *b.* 2 *Lev.* 77.

So, if he covenants to ſtand ſeiſed after ſo many Years, or after any other Contingency. 1 *Leo.* 195. *Pol.* 65.

So, if a Feoffment be to the Uſe of the right Heirs of *B.* after his Death, the Uſe ariſes after the Death of *B.* to his right Heirs, and in the *Interim* to the Feoffor. *Semb.* 1 *Sal.* 225.

Or to the Uſe of *C.* after the Deaths of *A.* and *B.* *Pol.* 59, 65, 95.

So, if he covenants to ſtand ſeiſed to the Uſe of his Mother in Fee, if he himſelf dies without Iſſue; for the Contingency happens upon his Death. *Pol.* 530.

If *A.* ſettles an Eſtate to the Uſe of *B.* after the Death of him and his Wife without Iſſue, if the Wife dies without Iſſue, living *A.* the Uſe to *B.* will be good; for the Uſe reſults to *B.* during his Life. 2 *Ver.* 372.

If *A.* makes a Feoffment to the Uſe of himſelf for Life, and then to *B.* his intended Wife, till their Son attains the Age of 21 Years, and afterwards to *B.* for ſo long Time as ſhe continues Sole; if *A.* dies without Iſſue, *B.* ſhall have it for her Life. *R. Dy.* 300. *b.* *Mo.* 15.

But an Eſtate does not ariſe, by way of a Springing Uſe, after a Death without Iſſue. *R. Skin.* 352.

So, if Husband and Wife, ſeiſed in Right of the Wife, levy a Fine to the Uſe of the Heirs of the Body of the Huſband upon his Wife begotten; the Uſe does not ariſe to the Heirs of the Body of the Huſband, after the Death of Husband and Wife, as a Springing Uſe. *R.* 4 *Mod.* 153. *Ca. Parl.* 105.

So an Uſe does not ariſe by Implication to the Husband for his Life; for there can be no Uſe by Implication, but to the Perſon who had the Uſe before, and this was the Wife only. *R.* 4 *Mod.* 154. *Ca. Parl.* 105.

So, if there be a preſent Limitation of a Uſe, which the *Ceſtui que Uſe* cannot take *in Præſenti*, it ſhall not ariſe to him, as a Springing Uſe *in futuro*: As, if a Fine, *&c.* be to the Uſe of the right Heirs of *B.* who is alive, the Uſe ſhall never ariſe to his right Heirs. 1 *Sal.* 225.

(L) Uſes how deſtroyed.

(L. 1 By Feoffment, &c.)

Vide Poſt, (L. 6.)

TO every Uſe there are two Incidents inſeparable; Privity in Eſtate, expreſſed or implied, and Confidence in the Perſon, expreſs or implied. 1 *Co.* 121. *b.*

And therefore a Feoffment upon valuable Conſideration without Notice deſtroys the Uſes. *Vide Ante*, (D. 2.)

So a Diſſeiſin, or Entry, *&c.* by ſuch as cannot ſtand ſeiſed to Uſes. *Vide Ante*, (F.)

So by Deſtruction or *Merger* of the particular Eſtate before the Contingency happens, the contingent Uſes in Remainder will be deſtroyed or defeated. *Semb. Dy.* 340. 1 *And.* 314. *Vide Eſtate*, (B. 15.)

So, if a Man raiſes an Uſe by Covenant, *&c.*

So, if he covenants to be ſeiſed to the Uſe of *B.* in Conſideration of Marriage with his Daughter, and before the Marriage *B.* diſſeiſes the Covenantor and makes a Feoffment, and then the Covenantor re-enters, and the Marriage takes Effect, the Uſes were deſtroyed by the Feoffment. *R.* 1 *Co.* 174. *b.*

So, if a Man covenants to ſtand ſeiſed to him and his Heirs, till the Marriage of his Son, and then to himſelf for Life, then to the Son for Life, Remainder to the Wife and the Iſſue of ſuch Marriage, and before the Marriage deviſes the Land, this prevents the Uſe ariſing. *Semb. Mo.* 733.

So, if a Man covenants to ſtand ſeiſed to the Uſe of his Son for Life, and afterwards to ſuch Wife as his Son ſhall take, and before his Son's Marriage makes a Leaſe for Years, and then the Marriage takes Effect, the Leaſe is a Revocation of the Uſes upon the Covenant during the Term; for the Wife ſhall take ſubject to the Leaſe, which was made by the Covenantor before the Contingency. *R.* 2 *Rol.* 793. *l.* 30. *R. cont.* 2 *Cro.* 169.

So, if he makes a Leaſe to commence at a future Day. *Dub.* 2 *Rol.* 794. *l.* 10.

So, if there be a Fine of the Manor of *B.* to *A.* and his Heirs, and of the Manor of *C.* to the Conuſor till Eviction of the Manor of *B.* by his Wife, and then to *A.* and his Heirs, and *A.* makes a Feoffment of the Manor of *B.* before Eviction, which afterwards happens, ſuch Feoffment deſtroys the Contingent Uſe of the Manor of *C.* *Dub.* 2 *Rol.* 795. *l.* 40.

So, if the Conuſor was attainted of Treaſon before the Eviction, the contingent Uſe of the Manor of *C.* is deſtroyed. *R. Mo.* 375.

But if a Covenantor to Uſes grants his Reverſion in Fee to another, who has Notice of the former Uſes, this does not deſtroy the Uſes; for the Grantee ſhall be ſeiſed to the firſt Uſes. *R.* 2 *Rol.* 796. *l.* 5. *Vide Ante*, (D. 2.)

So a Deviſe of a Rent, Annuities, *&c.* out of the Land, by the Covenantor, before the contingent Uſes ariſe, does not deſtroy them. *Semb. Mo.* 733.

So, if an Uſe be to *A.* for Life, Remainder to others, *&c.* a Feoffment or other Act by *A.* does not deſtroy the ſubſequent Uſes (except where the particular Eſtate is deſtroyed) where the contingent Uſes in Remainder depending upon it are not veſted. *Vide Eſtates*, (B. 13, 15.)

As, if an Uſe be to *A.* for Life, Remainder to his firſt Son, and before his Birth *A.* makes a Leaſe for Years, the Son, born after, ſhall avoid the Leaſe after the Death of *A.* 2 *Rol.* 794. *l.* 20.

If an Uſe be to the Heirs Male of *B.* by a ſecond Wife, and the Covenantor dies, a Fine by his Heir does not deſtroy the Uſes. 2 *Lev.* 75. *Vide Poſt,* (L. 6.)

(L. 2.) By a Power of Revocation.

(L. 2.) What ſhall be a good one.

So to Eſtates raiſed by Limitation of a Uſe a Power of Revocation may be annexed, and it will not be repugnant to the Eſtate: As, if a Man covenants to ſtand ſeiſed to the Uſe of himſelf for Life, and afterwards to his Son in Tail, with Remainder over, *Proviſo*, that it ſhall be lawful for him, during his Life, to revoke thoſe Uſes, and limit new Uſes. *Co. L.* 237. *a.* 3 *Ca. Ch.* 66.

So, if he makes a Feoffment, or levies a Fine, or ſuffers a Recovery to the Uſe of himſelf for Life, with Remainder, *&c.* and adds ſuch a Proviſo. *R. Mo.* 610.

So, if he levies a Fine, or ſuffers a Recovery to Uſes, with a Power of Revocation, and afterwards by Indenture revokes them, and limits new Uſes with a Power of Revocation, this ſecond Power is good; for the Whole ſprings out of the Recovery. *R.* 2 *Rol.* 262. *l.* 35. *Lane* 119.

So the Power of Revocation may extend only to Part of the Uſes: As, if a Feoffment be to the Uſe of the Feoffor for Life, with divers Remainders over, *Proviſo*, that he may revoke the Uſe to himſelf for Life, and limit it to another, and that the Remainders ſhall ſtand, it will be good. *Semb.* 2 *Rol.* 262. *l.* 30.

It may extend to a Revocation of Contingent Uſes, as well as Uſes *in Eſſe*. *Vide Poſt,* (L. 4.)

So he may limit a Power to a Stranger to revoke. 1 *Co.* 174. *a.*

(L. 3.) By what Words. *Vide Ante.* (D. 1.)— *Peiar,* A. 2.)

And any Words which ſhew the Intent of the Party are ſufficient to create ſuch Power of Revocation: As, if it be ſaid, *And if the ſaid* A. *ſhall make an Eſtate in Fee or Tail, &c. Then the Uſe ſhall be, &c.* without ſaying of what Land, it will be a good Power; for it ſhall be intended, of the Land in the Indenture. *R.* 2 *Rol.* 262. *l.* 40.

So, if the Words are, *It ſhall be lawful for* B. *to alter, change, &c. any Uſe and limit new*, it is ſufficient, without ſaying that he ſhall have Power to revoke. *R. Mo.* 611.

Or, *it ſhall be lawful to limit new Uſes, and afterwards the Fine, &c. ſhall be to the new, and not to the old Uſes.* *Mo.* 611.

Or, *that after altering, changing, &c. ſaid Uſes, the Fine ſhall be to the Uſes newly limited, &c.* *Mo.* 611.

So, if the Words are, *That by any Deed he may alter, &c. and after ſuch altering, &c. Uſes may ceaſe, and, after ſuch Time, the Feoffees ſhall ſtand ſeiſed to ſuch new Uſes as ſhall be declared, &c.* the Party may revoke, and by the ſame Deed limit new Uſes. R. 6 *Co.* 33.

If the Power is in another Deed, executed at the ſame Time, it is *tantamount* as if it was in the ſame Deed by which the Uſes are limited. 1 *Vent.* 279.

So, if the Power be to revoke and limit new Uſes, he may revoke and limit new Uſes, with the like Power *toties quoties*, which all ſpring out of the ſame Settlement. *R.* 1 *Sid.* 343. *R.* 2 *Rol.* 262. *l.* 35. *Semb. Lane* 119. *Per B. R. upon a Caſe referred by Harcourt Ld. Chancellor inter Hele & Bond, Eq. Abr.* 342.

But, if a Power of Revocation be given, without Mention of a Power to limit new Uſes; tho' he may revoke, he cannot limit new Uſes. 1 *Vent.* 198. *D. Lane* 119. *R.* 1 *Sid.* 344.

So, if a Power be given to revoke and limit new Uſes, and he revokes and limits new Uſes with Power of Revocation, and afterwards by a third Indenture revokes

revokes and limits other Uſes, the laſt Uſes are not warranted by the firſt Indenture, from which all the Uſes ſpring. *Lane* 119.

For, if a Man has Power to revoke and limit new Uſes, he can make a Revocation only once, if he does not give himſelf a ſubſequent Power to revoke by the Deed of Revocation. 1 *Co.* 173. *b.* *R. Eq. Abr.* 342.

(L 4) How a Power of Revocation ſhall be executed. What will be a good Revocation. *Vide Poiar,* (C. 1 &c)

A Perſon, who has a Power of Revocation, may ſhew his Intent *tam Rebus ipſis quam Verbis:* And therefore, if the Power be, *That if he is determined to revoke, he by Indenture may revoke and limit new Uſes, &c.* and he, upon Marriage with a ſecond Wife covenants to ſtand ſeiſed to the Uſe of himſelf and his ſecond Wife, and the Heirs of himſelf, tho' there be no expreſs Signification of his Determination to revoke; yet the Revocation is good, and the new Uſes well limited. *R.* 2 *Rol.* 263. *l.* 10. 10 *Co.* 144.

So, if he by Leaſe and Releaſe conveys to other Uſes, the former Uſes are revoked. *R.* 2 *Rol.* 263. *l.* 25. *R. Cro. Car.* 472. *Jon.* 393.

So, if a Man, who has Power of Revocation by an Indenture ſealed in the Preſence of three Witneſſes, covenants by an Indenture, ſealed in the Preſence of three Witneſſes, to levy a Fine to other Uſes, and levies a Fine accordingly; tho' he does not take Notice of his Power, it will be a good Revocation; for tho' by itſelf the Indenture by which he covenants does not make a Revocation, becauſe it does not paſs any Eſtate, nor raiſe any Uſe, and the Fine is no Revocation, for it is not ſealed before three Witneſſes; yet both make only one Conveyance, and it is a good Revocation. *R.* 2 *Lev.* 149. 1 *Vent.* 279. *Ray.* 239. *Carth.* 25.

So, if Tenant for Life with ſuch a Power of Revocation levies a Fine, and by Deed, more than a Month after the Fine, declares the Uſes of the Fine to himſelf in Fee, it will be a Revocation; for the Fine and Deed make one Conveyance, and therefore the Fine does not extinguiſh the Power. *R. cont. in B. R. but it was reverſed in the Exchequer. Per* 6 *J.* 2. *cont. Carth.* 22.

So, if he makes a Leaſe for Years to *A.* and a Month after releaſes to him and his Heirs.

So, if he releaſes to another and his Heirs, and the Leſſee attorns; for the Releaſe does not enure as a Grant, but as a Declaration of Uſes. *R. Jon.* 393.

So, if the Power be, That *if he by Writing ſignify and declare in expreſs Words his Intent to revoke, &c. the Uſes ſhall be void,* and afterwards he by his Will, without taking Notice of his Power, deviſes the Land to others, this will be a Revocation; for his laſt Diſpoſition to different Uſes ſhews his Intention to revoke. *R. Ray.* 301.

So, if an Eſtate be limited to *A.* and the Heirs Male of his Body with a Power to revoke, and the next Day, reciting that he has given to *A.* and his Heirs Male, he revokes and limits to him and his Heirs Male (without ſaying *of the Body*) Provided that he pay 1500*l.* to his Daughter, it will be a Revocation, tho' the Eſtate given to *A.* is miſ-recited, and there is no Reference to the Settlement. *R. Skin.* 324.

If the Power be *to revoke, alter, and avoid, &c.* and by Deed he ſays, that his Intent is to revoke, alter, or avoid, without ſaying that he *doth revoke*; yet it will be a good Revocation. *R. Mo.* 681.

If a Man recites his Power imperfectly, and afterwards revokes, it will be good. *R.* 3 *Lev.* 213.

If the Power be, that if *he by Writing ſubſcribed and ſealed by him before two Witneſſes ſignifies his Intent to revoke,* the Uſes ſhall ceaſe, and by Will, without taking Notice of his Power, he deviſes to other Uſes, it will be a Revocation. *R. Ray.* 301.

If the Power be to revoke by Deed or Will under Hand and Seal, a Revocation by Will, tho' not ſealed, is good. 2 *Rol.* 262. *l.* 15. 3 *Keb.* 551. *Win.* 83.

If it be to revoke by Deed, a Revocation by Leaſe and Releaſe is good, tho' they are two Deeds. 1 *Lev.* 150. *Vide Poiar,* (C. 3.)

If

If it is to revoke by a Writing under Hand and Seal delivered in the Preſence of three Witneſſes, a Revocation by Will under Hand and Seal publiſhed in the Preſence of three Witneſſes, is ſufficient, tho' Delivery ſeems intended of a Deed. *R. Hob.* 312. 1 *Vent.* 280. *R. Lit.* 111. *Win.* 83.

If to revoke by Writing under Hand and Seal, a Fine with a Deed to declare the Uſes is ſufficient; for they make only one Conveyance, tho' either of them by itſelf would be inſufficient. 4 *Mod.* 265. *Skin.* 35.

So a Feoffment to ſuch Uſes, tho' it is executed by Livery, which is not in Writing. *Semb. Mo.* 372, 378.

If he has Power to revoke and limit new Uſes, which he does, if he afterwards revokes them, he muſt purſue all the Circumſtances of the firſt Power. 1 *Vent.* 198.

So a Man, who has a Power of Revocation, may execute it for Part of the Land at one Time, and for Part at another Time. *Co. L.* 237. *a.* *R.* 1 *Co.* 173. *b.* *Mo.* 618. *R.* 10 *Co.* 86.

So he may execute it for Part of the Eſtate at one Time and Part at another: As, for ſo many Years at one Time, and afterwards for the Inheritance. 2 *Rol.* 263. *l.* 35.

So he may revoke contingent Uſes, as well as Uſes *in Eſſe*. *R.* 10 *Co.* 86. *b.* 2 *Rol.* 792. 2.

And by the ſame Deed, by which he revokes, he may limit new Uſes; for the old Uſes ceaſe *ipſo Facto* without Entry or Claim. *Co. L.* 237. *a.* *R.* 1 *Co.* 174. *R.* 6 *Co.* 32. *R. Mo.* 682.

And if he revokes without Limitation of new Uſes, he will be ſeiſed in Fee, as before, without Entry or Claim. *Co. L.* 237. *a.* *R.* 1 *Co.* 174. *R. Mo.* 605, 610.

If he has a Power to revoke and limit new Uſes, he may limit new Uſes with a Power of Revocation, and ſo *in Infinitum*. 1 *Vent.* 198.

If, upon the firſt Settlement, a Remainder was limited to the King in Fee, by a Revocation by Deed inrolled, the Remainder in the King and the other Eſtates are revoked. *R. Jon.* 393.

(L. 5.) What not. *When a defective Revocation ſhall be aided in Equity, Vide Chancery,* (4 O. 6.)

But, if a Man covenants to ſtand ſeiſed, *&c.* and by the ſame Indenture covenants to levy a Fine and make other Aſſurance to the ſame Uſes, and adds a Proviſo, *That if he by Writing, &c. revokes or otherwiſe limits, &c. any of the Uſes or Eſtates created by the ſame Indenture*, then he ſhall ſtand ſeiſed to ſuch Uſes, *&c.* if he levies a Fine, or makes a Feoffment to the Covenantees for Performance of the ſaid Covenants to the Uſes in the ſame Indenture generally, this does not amount to a Revocation; for it was intended only for a further Aſſurance. *R.* 2 *Rol.* 795. *l.* 10.

So, if a Man by a ſubſequent Deed explains the Intent of the former: As, if the Uſes by the firſt Deed are declared to the Mortgagee for Security of Money, and it is afterwards explained by another Deed, that the Mortgagor ſhall take the Profits in the mean Time, this does not amount to a Revocation. *R.* 2 *Rol.* 793. *l.* 10.

So, if a Man, who has a Power of Revocation, makes his Will, and deviſes the ſame Eſtate to others, tho' his Intent appears to make a different Diſpoſition; yet, if the Will is not executed with all the Circumſtances of the Power, it will not be a Revocation. *R.* 3 *Ca. Ch.* 66. *Vide infra.*

The Power of Revocation is in the Nature of a Condition, and it cannot be effectual, if all the Circumſtances preſcribed by the Power are not purſued. *R.* 3 *Ca. Ch.* 66.

So a Power of Revocation muſt be ſtrictly purſued: And therefore, if the Power be, that he may revoke by Deed indented, ſubſcribed and ſealed by him in the Preſence of three Witneſſes, all the Circumſtances muſt be obſerved. *R.* 10 *Co.* 144. *a.*

By a Writing ſubſcribed by three Witneſſes, a Writing ſubſcribed by two only is not ſufficient. *R. Lit.* 23.

If it be that he may revoke by Writing ſealed and delivered before three Witneſſes, a Will delivered before three Witneſſes is not ſufficient, tho' Sealing is not eſſential to a Will. *Hob.* 312.

That by Writing, &c. he may revoke and limit new Uſes, if he pleads that he enfeoffed *A.* to ſuch Uſes, and avers that the Feoffment was by Writing, it is not ſufficient; for it does not appear that the Uſes are declared by Writing. *R. Mo.* 370, 391.

If it be, *that he may revoke by Deed indented to be inrolled*, this is the ſame, as by Deed indented and inrolled; for it will be no Revocation till Inrolment. *R.* 1 *Co.* 173. *b.*

Or, by Deed inrolled in any of the King's Courts, and a ſubſequent Clauſe ſays, that *from Inrolment in Chancery the Uſes ſhall be revoked*, if the Deed is inrolled in *B. R.* yet the Uſes are not revoked till Inrolment in *Chancery*. *R.* 1 *Co.* 173.

If it be, *That he may revoke upon Tender of a Guinea*, if a Deed is executed to other Uſes without Tender of a Guinea, it will be no Revocation. 3 *Ca. Ch.* 70.

If a Power be by Indenture to revoke upon Tender of 10*s.* to *A.* and by another Indenture there is a Power to revoke the Uſes of other Land upon Tender of 10*s.* to *A.* Tender of 20*s.* to *A.* to revoke the Uſes of both Indentures is not good. *R.* 9 *Co.* 106. *b.*

If it be *to revoke upon Tender to A. at Weſtminſter*, Tender there, in the Abſence of *A.* and without Notice to him, is not good. *R. Mo.* 602.

Yet the Acceptance of the Party may aid an improper Tender: As, if the Power is to revoke upon Tender of 12*d.* to *A.* in the *Temple*, and he tenders, and *A.* accepts it in another Place. *Per Powel*, 3 *Cha. Ca.* 68. If *A.* be privy to the Deed, otherwiſe, if a Stranger.

So a Power of Revocation which depends upon a Thing perſonal and individual, cannot be executed by another: As, if a Man covenants to ſtand ſeiſed to Uſes, with a Proviſo, *That if he is minded, and ſignifies his Mind by Writing under his proper Hand and Seal, &c. he may revoke, &c.* and afterwards he is attainted of Treaſon, the King cannot make a Revocation. *R.* 7 *Co.* 13. *a.*

Or, *if he be minded and declare ſuch his Intent by Writing under Hand and Seal.* R. 1 *Vent.* 129. 1 *Mod.* 16. 1 *Lev.* 279.

Or Proviſo, *That if he tender a Ring, &c. to the ſaid W. declaring his Intent to be to revoke*; for it is perſonal. *Dub. for the Court was divided. Lat.* 25. *Jon.* 134. *Acc.* 1 *Vent.* 129. 2 *Rol.* 393.

But, if the Power be to revoke upon Tender of a Gold Ring, *&c.* and he, who has the Power, is attainted of Treaſon, the King may make the Tender. *R.* 7 *Co.* 13.

And the King may depute others by Letters Patent to make the Tender. 7 *Co.* 12. *a.*

And their Tender and Certificate to the *Exchequer*, is ſufficient without Office. *R.* 7 *Co.* 14. *b.*

And immediately upon the Tender, the Uſes are determined and null. 7 *Co.* 14. *b.*

Yet the Tender muſt be in the Life-time of the Perſon attainted. 1 *Vent.* 132.

So, if the Power recites, *That he being apprehenſive that Ceſtui que Uſe may be Prodigal, &c. and therefore he will keep the Reins in his own Hands, and intends if he offers a Ring with an Intent to revoke, &c. the Uſes ſhall be revoked*, if he is attaint, *&c.* the King may make Tender of the Ring, and thereby revoke; for the Recital is only a Flouriſh, and the Tender is the Subſtance. *R.* 7 *Co.* 13.

If

If a Man, who has a Power of Revocation, before Execution of his Power makes a Feoffment, levies a Fine, or ſuffers a Recovery of the Land, it deſtroys and extinguiſhes his Power. *Co. L.* 237. *a.* *R.* 1 *Co.* 112. *R.* 1 *Co.* 174.

(L. 6.) When a Power of Revocation will be extinguiſhed or deſtroyed. *Vide Poier*, (D. E.)— *Ante*, (L. 1.)

And his Power of Revocation, as well as of limiting new Uſes, will be extinct. *R.* 1 *Co.* 112.

So, if he levies a Fine, and afterwards by Deed, with all the Circumſtances of the Power, declares the Uſes of the Fine, the Power is extinct; for the Power cannot be revived by a ſubſequent Deed, which was extinguiſhed by the Fine before. *Adm.* 1 *Vent.* 280. *R. per* 3 *J. Withens cont.* 1 *Vent.* 363, 371. *But this Judgment was afterwards reverſed by ſix J. againſt two in Error. Carth.* 23.

So, if he makes a Leaſe for Life or other Eſtate of Freehold, this ſuſpends the Power, ſo that he cannot revoke during the Life. *R.* 2 *Rol.* 263. *l.* 40. *per* 1 *J. but Dub. by another*, if the Power was not extinguiſhed. 1 *Vent.* 42.

So, if he makes a Leaſe for Years, and levies a Fine for Confirmation of the Leaſe, this ſuſpends the Power during the Years. *Mo.* 618. (*Vide Infra.*)

If he makes a Leaſe for Years, and the Leſſee attorns, and he a Month after grants the Reverſion to the Leſſee, it will be a Revocation; for tho' the Leaſe ſuſpends his Power, the Grant of the Reverſion does not enure as a Grant, but as a Declaration of a new Uſe. *R. Jon.* 393.

So, if he releaſes his Power to him, who has an Eſtate in the Land, in Poſſeſſion, Reverſion or Remainder, the Power is extinguiſhed, and the Eſtate defeaſible by the Power is made abſolute. *R.* 1 *Co.* 113. *a.* 174. *a.*

Tho' the Power be future, *viz.* to revoke after the Death of *B.* without Iſſue. *Semb.* 1 *Co.* 112. *b.*

So a Defeaſance by the Parties to the ſame Deed may annul the Power. *R.* 1 *Co.* 113. *a.*

But, if a Man has no Intereſt in the Land, nor will have by *Ceſſer* of the Eſtate, his Fine or Feoffment, being collateral to the Land, does not extinguiſh his Power: As, if *A.* upon a Feoffment reſerves a Power to *B.* to make a Revocation, *&c.* a Fine or Feoffment of the Land by *B.* does not extinguiſh his Power. *Co. L.* 237. *a.* 1 *Co.* 174.

Nor his Releaſe. 1 *Co.* 174. *a.*

If *A.* covenants to ſtand ſeiſed to the Uſe of the Heirs Male of his Body by a ſecond Wife, and dies, a Fine or Recovery by his Son and Heir by the firſt *Venter* does not deſtroy the Power of Revocation or the contingent Uſes. *Adm.* 2 *Lev.* 75.

So, if a Man, who has a Power of Revocation, levies a Fine, or makes a Feoffment of Part of a Land, it extinguiſhes his Power only for that Part. *R.* 1 *Co.* 174. *Co. L.* 237. *a.*

But, if a Man, who has a Power of Revocation, makes a Leaſe for Years, purſuant to a Power in the ſame Conveyance, this does not ſuſpend his Power of Revocation as to the Reverſion. *R. Mo.* 788. *Jon.* 393. 1 *Rol.* 473. *l.* 10.

So, if he makes a Leaſe for Years not in Purſuance of a Power. *Mo.* 614. *Per Walmſly*, *Mo.* 618. *Dub. Mo.* 788. *R.* 2 *Rol.* 263. *l.* 30. *Cro. Car.* 472. *Jon.* 393.

So, if the Power be, to make another Eſtate in Fee or Tail, a Covenant to ſtand ſeiſed to the Uſe of his Wife for her Life, does not alter his Power. *R.* 1 *Ch. R.* 113.

So, if a Man, having an Eſtate for Life with a Power of Revocation, by Deed covenants to levy a Fine to ſuch Uſes, and afterwards levies a Fine accordingly, this does not extinguiſh his Power, and the Whole makes but one Conveyance. *R.* 1 *Vent.* 279. *Ray.* 239. 2 *Lev.* 149. *Skin.* 35, 184.

(M) What

(M) What Uſes are ſuppreſſed, as ſuperſtitious.

BY the *St.* 23 *H.* 8. 10. (which was the firſt Statute againſt ſuperſtitious Uſes) all Feoffments, *&c.* to the Uſe of Pariſh Churches, *&c.* to have perpetual *Obits*, or find a Prieſt, *&c.* are within the Miſchief of Alienation in *Mortmain*, and therefore all ſuch or like Uſes above twenty Years ſhall be void.

By the *St.* 1 *Ed.* 6. 14. All Lands, Rents, *&c.* to find Stipendiary Prieſts, *&c.* or for Maintenance of Anniverſary *Obits*, or like Purpoſes, or any Light, Lamp in Church, *&c.* ſhall be veſted in the King; and if but Part of the Iſſues go to maintain ſuch Anniverſary *Obit*, Lamp, *&c.* the King ſhall have the ſame in the Nature of a Rent-Charge, *&c.*

Lands in Tail, or for Life, for ſuch ſuperſtitious Uſe, are within the Statute, as well as Eſtates in Fee or for Years, which only are mentioned. *R.* 4 *Co.* 106. *b.* *Godb.* 309.

So Lands given to a Wife, *&c.* for ſuch Intent, and it will not be intended in Conſideration of Blood, *&c.* *R.* 4 *Co.* 105.

So Land given to a Son, upon Condition, that if he does not find, *&c.* the Feoffor may enter, tho' it is not ſaid, to the Intent to find. *R.* 4 *Co.* 107. *a.*

So, if Land is given to a Parſon and his Succeſſor to find, and he leaſes for Life, and with the Rent finds, *&c.* till the *St.* 1 *Ed.* 6. made, the King or his Patentee may enter. *R. Dy.* 337. *b.*

So, if Land be given, *That Prayers be made for the Soul of the Deceaſed*, it will be within the Statute, which ſays, *or like Uſes*. *R.* 4 *Co.* 112, 113. 1 *Rol.* 417.

Tho' the Prayers are to be made in *Draper's-Hall*, *&c.* and not in a Church or Chapel. 4 *Co.* 114. *a.*

Or, by the Priſoners in *Newgate*, upon the Anniverſary of his Death. 4 *Co.* 116. *a.*

Or, for maintaining a Popiſh Prieſt. 2 *Vern.* 266.

If Land of 20*l.* *per Annum* is given to the Intent to find a Prieſt, *&c.* the Whole ſhall go to the King, tho' only 10*l.* is to be paid to the Prieſt. *R.* 4 *Co.* 109, 110. *b.* 113. *b.* 115. *b.* *R. Mo.* 131, 264.

So, if it be given to find a Prieſt, and for twenty poor Men, without aſcertaining how much ſhall be to one, how much to the other. *R.* 4 *Co.* 111. 113. *a. b.*

Tho' 10*l.* was uſually paid to the Prieſt and 10*l.* to the Poor. *R.* 4 *Co.* 111. *a.* 113. *b.* *R. Mo.* 264.

So, if it be given, with 10*l.* *to find a Prieſt, and with the Reſidue* to ſupply an Uſe depending thereon; as, the finding Veſtments, ſaying Maſs, *&c.* *R.* 4 *Co.* 112, 114. *a.* *R. Mo.* 129. 4 *Co.* 116. *Lat.* 38.

So, if it be given to find ſo much for one Uſe, and ſo much for another, (where all are Superſtitious) in whatever Manner it is limited. *R.* 4 *Co.* 112. *a.*

Or given to find a Prieſt, and that he ſhall find a Grammar School, and for it ſhall have 10*l.* for his Salary; for the good Uſe is derived out of the ſuperſtitious Uſe. *R.* 4 *Co.* 113. *a.*

If given to find a Prieſt, who ſhall have 5*l.* *per Ann.* and what remains to the Repair of the Church; for the ſuperſtitious Uſe is certain, the good Uſe uncertain. *R. Cro. Car.* 249, 456.

But, if Land of 20*l.* *per Annum* be given to the Intent, that the Feoffee pay 10*l.* to a Prieſt, only the 10*l.* is given to the King. *R.* 4 *Co.* 110. *b.* 113. *b.* *R. Mo.* 694.

Or, if it be given to find a Prieſt, and that he ſhall have only 10*l.* *per Ann.* and the Reſt ſhall be for the Poor. *R.* 4 *Co.* 110. *b.* *R. Mo.* 131.

O

Or, given to raiſe 10*l.* for a Prieſt, and to find Veſtments, &c. tho' it does not aſcertain how much ſhall be for that Purpoſe. *R.* 4 *Co.* 109. *b.* *Mo.* 131.

Or, *Black Acre* be given for an *Obit*, and *White Acre* for the *Obit* and Poor; Proviſo, that if *Black Acre* does not raiſe 10*l.* for the *Obit*, it ſhall be ſupplied from *White Acre*. *R. Cro. Car.* 249.

So, if by Expreſs Words or Implication it appears that the Reſidue was intended for the Deviſee. *R.* 4 *Co.* 116. *b.*

So, if the whole Land was intended for a Superſtitious Uſe, but only a Part was conveyed for that Purpoſe, that Part only ſhall go to the King, tho' the Whole was employed for that Purpoſe. *R.* 4 *Co.* 115.

So, if Land is charged with a Rent of 20*l.* to find a Prieſt, &c. the Rent only ſhall go to the King. *R.* 4 *Co.* 110. *b.* 116. *b.*

So, if Money be deviſed to a Dean and Chapter, to find a *Chantry*, and they oblige themſelves to do it, and afterwards purchaſe Land and employ the Profits for a Prieſt, *Obit*, &c. but there is no Settlement for ſuch Purpoſe, they are not given to the King. *R.* 2 *Cro.* 51.

If Land was given to find an *Obit*, &c. but none was found within five Years before the Statute of 1 *Ed.* 6. the Land was not given to the King. *Dy.* 368. 4 *Co.* 114, 115.

So Uſes limited ſince that Statute are not thereby given to the King. *Per Holt*, *M.* 4 *W.* & *M.* 1 *Sal.* 163.

So Chantries in Reputation, without Colour of legal Foundation, are not given to the King. *R.* 4 *Co.* 107. *b.* 108. *b.* 2 *Cro.* 51.

Otherwiſe, if there was Colour of a good Foundation, tho' it be defective. *R.* 4 *Co.* 108. *a.*

So a Deviſe upon a Truſt for a Superſtitious Uſe, tho' it is void; yet it does not reſult to the Heir, or to the King, but it ſhall be applied to a good Uſe. *R.* 1 *Sal.* 163. 2 *Vern.* 266.

As, if it be for Independent Lectures. 2 *Vern.* 267.

Or for Presbyters to promote the Diſcipline of the Church of *England*, in *Scotland*. *R.* 2 *Vern.* 266.

(N) Charitable Uſes.

(N. 1.) What are.

(N. 1.) Relief of the Poor.

BUT Charitable Uſes were not given to the King, nor ſuppreſſed by the *St.* 23 *H.* 8. 10. nor by the *St.* 25 *H.* 8. 26 *H.* 8. or 28 *H.* 8. which take away the Authority of the Pope, nor by the *St.* 27 *H.* 8. 31 *H.* 8. 37 *H.* 8. or 1 *Ed.* 6. 14. which ſuppreſs Abbies, Chantries, &c. *R.* 1 *Co.* 24. *Porter*. *R.* 4 *Co.* 111. *a.*

And therefore by the *St.* 43 *El.* 4. Commiſſions may be to inquire of and redreſs the Miſemployment, &c. of Lands, Goods, &c. given for the charitable and godly Uſes therein rehearſed.

And in the ſame Statute it is allowed, for a Good and Charitable Uſe, if Lands, Goods, &c. are given, &c. for the Relief of aged, impotent, and poor People. 1 *Co.* 24. *a.*

So, if the Gift be to the Poor of ſuch a Pariſh, without ſaying, that they are aged or impotent; for Poverty of itſelf is ſufficient. *Duke* 132.

Or to ſuch an Hoſpital. *Ibid.*

Or to all not aſſeſſed to the Subſidy; for they are Poor. *Ibid.*

So, in whatever Manner the Relief be: As, if it be to provide Bows and Arrows for the Children of the Poor; for it is an Eaſement to the Parent, who ought to find them. *Ibid.*

For erecting Cottages for the Poor with four Acres of Land to each. *Ibid.*

For making Conduits to Almſhouſes. *Ibid.*

For building an Houſe in which they may take Alms. *Ibid.*

Or maintaining a Common Laundreſs in an Hoſpital, &c. *Duke* 132.
Or a Chaplain for Prayers, &c. *Ibid.*
So, for providing Arms for their Defence. *Ibid.*
Or Increaſe of Diet upon Feſtivals, &c. *Duke* 133.
But, it ſhall not be allowed for a good Uſe, if it be for Relief of all the aged and impotent in ſuch a Pariſh; for That comprehends the Rich as well as the Poor. *Duke* 132.
Or to the Poor in general. *Ibid.*
Or, to the Religious, when the Time permits, and in the *Interim* for the Poor. *Duke* 133.
So, if it be for Weapons for the Poor; for they are not neceſſary. *Duke* 132.
For putting up Seats for begging; for it is unlawful. *Duke* 133.
Yet the *Chancery* may ſettle ſuch Uſes, as the Commiſſioners by the *St.* 43 *El.* cannot. *R.* 2 *Lev.* 167.
[If one grants a Rent-charge of 20 *l. per Annum* for a Charity, toward the Support of poor old Men, and then grants the Lands, &c. to *A.* and his Heirs; the Heir of the Grantor of the Charity, and not the Grantee of the Lands, ſhall nominate the old Men. *Attorney-general* v. *Rigby*, *M.* 1732. 3 *P. W.* 145.]

(N. 2.) Soldiers or Mariners diſabled.

So by the *St.* 43. *Eliz.* it is rehearſed, and will be allowed for good, if the Gift be for the Maintenance of *ſick and maimed Soldiers and Mariners.* 1 *Co.* 26. *a.*
So, if *they are ſick or maimed*, in the Disjunctive. *Duke* 134.
If he ſerved as an Officer or Common Soldier, Prieſt, or Volunteer. *Duke* 133.
As a Servant, Victualler, Artificer, Pilot, &c. in a Merchant's or King's Ship. *Duke* 133.
Tho' the Soldier or Mariner be an Alien. *Ibid.*
But the Statute does not extend to Soldiers, beyond the Time of their Sickneſs. *Duke* 134.
To the Wife, Iſſue, or Servants of a diſabled Soldier or Mariner. *Duke* 133.
To Bargemen, Wherrymen, Owners of, or Paſſengers in, a Ship. *Ibid.*
Nor Victuallers, &c. who voluntarily attend the Army. *Ibid.*
If he be maimed in a foreign Ship or Service. *Ibid.*
Or by Way of Puniſhment for an Offence. *Duke* 134.

(N. 3.) Schools.

So, if a Gift be for Schools of Learning, Free-Schools, or Scholars in the Univerſity. 1 *Co.* 26. *a.*
Schools for Writing, Languages, Muſick, Mathematicks, &c. for they are Schools of Learning.
If it be for Furniture, &c. of the Houſe, &c. Proviſion for the Maſter, Uſher, &c. *Duke* 134.
But the Statute does not extend to Schools, for Dancing, Fencing, &c. *Ibid.*
Or for inſtructing in the Catechiſm; for this is a Matter of Religion. *Ibid.*
Or ſuch as are not Free-Schools. 2 *Vern.* 387.
Nor to a Gift for Scholars in any other Place than *Oxford* and *Cambridge*: As, in the College of Phyſicians. *Duke* 134.
Or in *Oxford*, *Cambridge*, or elſewhere, at the Diſcretion of the Feoffees. *Ibid.*

(N. 4.) Bridges, &c.

So, if a Gift be for Repair of Bridges, Ports, Havens, Cauſways, Churches, Sea-Banks and Highways. 1 *Co.* 26. *a.*
And ſuch Gift will be good, tho' another be bound by Covenant or Preſcription to repair.
If the Gift be for the Repairing of a Common Pond or Watering Place. *Duke* 135.
For Lights to direct Ships to the Haven. *Ibid.*

So, if a Gift be for Preferment and Education of Orphans. *Duke* 135. (N. 5.) Orphans.
Or of a Baſtard; for he has no Parent. *Ibid.*
So, if it be for Horſes to inſtruct Orphans, who hold in *Chivalry*, to ride. *Duke* 136.
And a Woman continues an Orphan, tho' married, till Age of Conſent. *Duke* 135.
But a Servant or Apprentice is no Orphan; for his Maſter is *in Loco Parentis*. *Ibid.*

So, if a Gift be for the Relief, Stock, or Maintenance of a Houſe of Correction. 1 *Co.* 26. *a.* (N. 6.) Houſe of correction.
Or for building a Houſe of Correction. *Duke* 136.

So, if a Gift be for the Marriage of poor Maids. 1 *Co.* 26. *a.* *Cro. Car.* 525. (N. 7.) Poor Virgins.
Or for a Wedding Dinner, or Apparel for them. *Duke* 136.
And it ſhall be allowed to ſuch as are Poor, tho' they have wealthy Relations. *Ibid.*
But not to thoſe who have rich Parents, or Legacies. *Ibid.*
Or marry againſt their Parent's Conſent. *Ibid.*
Or are Incontinent. *Ibid.*
So Proviſion for a Wedding-Ring for a poor Virgin will not be a good Uſe; for the Huſband ought to provide it. *Ibid.*

So, if a Gift be for the Support of Tradeſmen, Handicraftſmen, and Perſons decayed. *Duke* 136. (N. 8.) Decayed Tradeſmen,
As, if they become decayed by Negligence, Fire, Fraud of Servants, *&c.* *Ibid.*
Bankrupts in Cuſtody after Submiſſion to the Laws. *Ibid.*
But the Statute does not extend to Tradeſmen ſet up above five Years. *Ibid.*
Nor to Bankrupts, who abſcond. *Ibid.*
Or Perſons in Decay by Suretyſhip, *&c.* *Ibid.*

So, if it be for Relief or Redemption of Priſoners or Captives. *Cro. Car.* 525. (N. 9.) Priſoners and Captives.
As, *Chriſtians* captive to the *Turks*. *Duke* 136.
Perſons in Execution, or upon *Præmunire*. *Ibid.*
But the Statute does not extend to Perſons captive to a *Chriſtian* Prince in War. *Ibid.*
To Perſons in Priſon for Contempt. *Ibid.*
Nor to the Wife or Iſſue of a Priſoner. *Duke* 137.

So, if a Gift be for the Aid and Eaſe of Poor Inhabitants, in Payment of Fifteenths, ſetting out Soldiers, or other Taxes. 1 *Co.* 26. *a.* (N. 10.) Aid of poor Inhabitants, *&c.*
So, if it be to make Hue and Cry, Watch and Ward, *&c.* *Duke* 137.
But the Statute does not extend to a Gift for Diſcharge of Subſidies; for they are not paid by the Poor. *Duke* 137. Other Charities not ſuperſtitious.
Nor for diſcharging Fines for Eſcape, Robbery, *&c.* *Ibid.*
So, if a Gift be for the Proviſion of a Preacher, *&c.* it will be a charitable Uſe within the Equity of the Statute. *R. Poph.* 139. *Duke* 32, 109.
So, a Gift for the Maintenance of a Chaplain or Prieſt for Divine Service will be a Charitable Uſe and in the Direction of *Chancery*, tho' not within the Power of the Commiſſioners. *Duke* 109. 2 *Lev.* 167.
So a Gift for a Lecture or Sermon. 2 *Ca. Ch.* 18.
For ſixty ejected Miniſters. *R. Per Commiſſioners* 1689. *and Decree cont. reverſed.* 1 *Ver.* 249. 250. 2 *Ver.* 105.

(N. 11.)

(N. 11.) What ſhall be a good Appointment to a Charitable Uſe.

If Lands or Goods are given, limited, appointed, or aſſigned to a charitable Uſe, it is ſufficient, tho' it be not purſuant, in all Reſpects, to the Direction of the Law: As, if the Gift be to Perſons not capable by Law to take; as, if Land be deviſed to the Church-wardens of *D.* tho' they cannot take Lands. *Duke* 115, 139. *Vide Chancery*, (2 N. 2.)

Or to the Pariſhioners of *D.* or the Pariſh of *D.* *Duke* 139, 140.

Or Parſon and Church-wardens to ſell. *Duke* 81.

Or Parſon and his Succeſſors, tho' he is no Corporation. *Duke* 139.

So, if it be to the Poor of an Hoſpital, tho' they are not incorporated. *Duke* 81, 115.

So, if 10*l. per Annum* be given for a Sermon in *A.* without ſaying to whom. *R.* 2 *Ca. Ch.* 18.

So, if it be to a Corporation, which is miſnamed. *R. Ca. Ch.* 267.

Or to a Corporation to the Uſe of another; tho' a Corporation cannot be ſeiſed to an Uſe. *Duke* 81, 138.

To an Idiot, *Feme Covert*, Bankrupt, Recuſant, *&c.* *Duke* 138.

To ſuch Charitable Uſes as he had by Writing directed, and no ſuch Writing is found, it will be a good Appointment, and the King may direct the Application upon a Bill in Equity. *R.* 1 *Ver.* 225.

So, if he gives the Surplus of his Eſtate *for the good of Poor People for ever*, without ſaying whom. 1 *Ver.* 225.

So, if a Gift or Appointment be made to a Charitable Uſe by an improper Conveyance: As, if Land was deviſed before the *St.* 32 & 34 *H.* 8. tho' not deviſable by Cuſtom. *Per* 2 *J. Mo.* 889.

If a Rent be reſerved to *A.* for the Uſe of the Poor, tho' *A.* is a Stranger. *Duke* 140.

If a Copyhold be given to the Uſe of the Poor, *&c.* tho' there is no Surrender. *R. Mo.* 890. *Ray.* 249. 2 *Ver.* 454.

If a Deviſe was by a *Feme Covert*, of Goods, which ſhe has as Adminiſtratrix; for an Adminiſtrator had the Goods to diſpoſe *in pios Uſus*. *R. Mo.* 882. 2 *Ver.* 454.

So, if by voluntary Agreement between Mariners 4*d.* a Month be allowed out of their Wages for maimed Mariners, it will be a good Limitation within the Statute. *R. Mo.* 889.

If a Term be deviſed to *A.* for Life, Remainder to Charitable Uſes, tho' there can be no Remainder of a Term. *Duke* 140.

If a Deviſe be by Tenant in Tail before a Recovery ſuffered. *Ray.* 249. *R.* 2 *Ver* 453. *Vide Chancery*, (2 N. 2.—4 S. 2.)

So, it will be good againſt him in Remainder. *R. in Chanc. inter Burdet and Inhab. of White Chapel*, 2 *Ver.* 755.

So, if a Woman ſettles Land with a Power of Revocation, and gives Inſtructions in Writing, for a Settlement to Charitable Uſes, but dies before the Settlement, it ſhall be a good Appointment, tho' no Revocation. *Eq. Ca.* 138.

But a Diſpoſition to a Charitable Uſe by him, who has not Ability to grant, ſhall not be decreed: As, by an Idiot, Lunatick, *&c.* *Duke* 114, 138.

By an Infant, *Feme Covert*, *&c.* 3 *Ch. R.* 152. *Duke* 138.

By a Bankrupt. *Duke* 138.

So, if a Daughter gives Lands to a Charitable Uſe, which ſhe has by Deſcent, if there was no Truſt in her Father ſo to diſpoſe, an afterborn Son may avoid it. *Duke* 138.

So a Deviſe to a Charitable Uſe by a Tenant *in Capite* will be void for a 3d Part. *R. Ray.* 249. *R. Cro. Car.* 525. *Cont.* 2 *Ver.* 454.

So a Deviſe by a Nuncupative Will will be void; for the *St.* 29 *Car.* 2. has repealed the *St.* 43 *El.* 4. *pro tanto*. *R.* 1 *Sal.* 162. *Eq. Ca.* 44.

Tho' made before the *St.* 29 *Car.* 2. If the Teſtator died after. 1 *Sal.* 163. *Semb.* 3 *Ch. R.* 153.

So

So a Deviſe by a Will, not executed in the Preſence of three Witneſſes, ſince the *St.* 29 *Car.* 2. will be void, tho' it be to Charitable Uſes. *R.* 2 *Ver.* 598.

[There muſt be a Will duly executed to create a Charitable Uſe, and *Chancery* will not ſet up a Truſt for a Charity without a Declaration in Writing; for Charitable Uſes are within both the Clauſes of the Statute of Frauds, the Clauſe of Deviſes, and the Clauſe of Declarations of Truſt. *Adlington* v. *Cann*, *T.* 1744. 3 *Atkyns* 141.]

So a Deviſe that Land ſhall be ſold for Payment of Legacies, the Reſidue to Charitable Uſes, is not a Diſpoſition of the Land itſelf. *R. Cro. Car.* 526.

So a Deviſe with Remainder to Charitable Uſes, with Intent to create a Perpetuity, ſhall not be decreed. 1 *Ver.* 161, 162.

(N. 12.) How expounded.

A Gift or Appointment to a Charitable Uſe ſhall be liberally expounded: And therefore where Land of ſuch a Value is deviſed, the Whole ſhall be employed, tho' the Value is improved. *Vide Chancery*, (2 N. 1, &c.)

If a Manor is charged with 1000*l.* to put out Apprentices in ſuch Pariſh as his Executors ſhall appoint, tho' the 1000*l.* is paid to the Executor of the Donor, the Manor is not diſcharged till it is veſted in Truſtees for the intended Charity. *R. Ch. R.* 187.

(N. 13.) By whom the Appointment may be.

Every One, having Ability to make a Grant or Deviſe, may appoint to Charitable Uſes. *Vide Ante*, (N. 11.)

So, where an Inteſtate had *Bona Notabilia*, after Adminiſtration granted and an Inventory exhibited, upon Citation of the Adminiſtrator the Judge of the Eccleſiaſtical Court might direct a particular Sum according to the Circumſtances of the Eſtate to ſuch Charitable Uſes in particular as he pleaſed. 4 *Inſt.* 336.

And this was to be done by Publick Act of the Court without Fee, and then the Adminiſtrator was bound to do it. *Ibid.*

(N. 14.) Juriſdiction for Charitable Uſes.

(N. 14.) By Commiſſion.

How Relief ſhall be in *Chancery* for Charitable Uſes. *Vide in Chancery*, (2 N. 1, &c.)

[The Court, on an Information of *Attorney-General*, may direct the Election of a Maſter of a Free School of Royal Foundation, and this is not interfering with the Viſitatorial Power. *Attorney-General* v. *Shrewſbury*, *P.* 1726. *Bunb.* 215.]

By the *St.* 2 *H.* 5. 1. The Ordinary ſhall inquire of and reform the Government of Hoſpitals of the King's Foundation by Commiſſion, and return the Inquiſition taken thereon into *Chancery*, and other Hoſpitals *Ex Officio*.

By the *St.* 39 *El.* 9. Commiſſions might be awarded to inquire of Lands or Goods given to Hoſpitals or Charitable Uſes, *&c.* *But this is repealed by* 43 *El.* 9.

By the *St.* 43 *El.* 4. Lord Chancellor, *&c.* may award Commiſſions to the Biſhop of the Dioceſe, his Chancellor, and others, *&c.* or any four of them, to inquire by the Oaths of 12 Men, or other lawful Means, of all Gifts, *&c.* to the Charitable Uſes there ſpecified, and of all Abuſes, Miſemployments, *&c.* of Lands, Goods, *&c.* given to the ſaid Charities: And after Inquiry, *&c.* calling the Parties intereſted, to ſet down ſuch Decrees, *&c.* that the Lands, Goods, *&c.* may be duly employed for the Charitable Uſes for which given.

And all Decrees, *&c.* ſhall be certified into *Chancery*, under the Seals of the Commiſſioners in the Time limited by the Commiſſion; And ſhall ſtand good till altered by the Lord Chancellor on Complaint by Party grieved.

So the King himſelf may name Commiſſioners, or ſign the Commiſſion, as well as the Chancellor. *Duke* 144.

Or Commiſſioners of the Great Seal. *Cont. per Mo. Duke* 144.

The Commiſſion muſt be under the Great Seal. *Duke* 144.

And conform to the Words of the Statute. *Duke* 146.

It must be awarded to the County, where the Land lies. *Duke* 145.

Or, where Goods are to be employed. *Duke* 149.

If Land in one County is given in Charitable Uses in another, there must be several Commissions to both Counties. *Duke* 145, 148, 149.

So, if the Land lies in several Counties. *Duke* 145, 148.

Of the Rent issues out of Land in several Counties. *Duke* 145, 148.

So, if the Land or Goods are in a County Palatine and the Employment out of it, or *Vice versa*, there must be Commissions under both Seals. *Duke* 145.

(N. 15.) Who may be Commissioners.

There must be five Commissioners at least. *Duke* 146.

And the Bishop of the Diocese, if he is *in Esse*, must be a Commissioners, otherwise, it will be void. *R. per* 4 *J. Duke* 63.

But a Bishop elect need not be named a Commissioner, if he be not consecrated. *Duke* 145.

Nor a Suffragan. *Duke* 145.

Nor a consecrated Bishop, if he is concerned in Interest: As, if Goods of an Intestate, given to Charitable Uses, are in his Hands, as Ordinary till Administration granted. *Duke* 145, 146.

So, if the Bishop is named, the other Commissioners may act without him. *Duke* 63, 117, 145.

So any One of good Fame may be a Commissioner. *Duke* 117, 145.

So an *Alien* Friend may be a Commissioner. *Duke* 145.

So a Person indicted for a Petty Misdemeanor: As, a Riot, *&c.* *Duke* 145.

Outlawed, if the Outlawry be reversed: for that disaffirms the Outlawry. *Duke* 146.

Citizen or Burgess, tho' the Charitable Use is for the Benefit of the City or Burrough. *Duke* 147.

But by the *St.* 43 *El.* 4. Commissioners ought to be of good and sound Behaviour: And therefore a Person, convicted of Treason, Felony, or Misprision, cannot be a Commissioner.

Nor One convicted for Cosinage, Barretry, Simony, *&c.* *Duke* 145.

Or for Acquitting of a Felon, against Evidence, when he was a Juror. *Duke* 145.

Nor one Outlawed or Excommunicated at the Time of the Commission, tho' afterwards pardoned or absolved. *Duke* 146.

Nor an Infant at the Time of the Commission, tho' he afterwards comes to full Age. *Duke* 146.

So, a Person interested cannot be a Commissioner: As, an Executor or Administrator of the Goods given. *Duke* 146.

Or any One, who claims the Reversion or Remainder of the Lands given. *Duke* 146.

Nor a Member of a particular Corporation, to whom the Charity is given: As, One of the *Mercers* Company, *&c.* where the Gift is to such Company. *Duke* 147.

(N. 16.) What Inquisition shall be good. As to a Gift to a Charitable Use.

So Commissioners may make Enquiry by all Lawful Means of all Gifts, *&c.*

And therefore Inquiry, by Examination of Witnesses, Rentals, Accounts, prior Inquisitions, as well as by Jury, will be good. *Duke* 150.

Or by the Commissioners own Knowledge. *Duke* 150.

And an Inscription upon the Tomb of the Donor of a Charitable Use is sufficient.

And by such Means they may supply a Defect in the Finding of the Jury in the Circumstances of the Gift: As, that a Gift for poor Tradesmen was for such Sort of Tradesmen. *Duke* 150.

That the Misemployment found was for so long Time. *Ibid.*

And it is sufficient if 12 Jurors agree, tho' 16 are impanelled. *Ibid.*

So an Inquisition will be good, tho' it does not find all the Circumstances of the Gift, if the Substance be found: As, if the Gift be found *quibusdam ignotis*, or *per quendam ignot'*. *Duke* 149.

So, if it finds a Gift variant in Circumſtances from the Truth: As, if it be found to be made by Fine, Feoffment, &c. when it was by Will, or other Conveyance. *Duke* 149.

So, it is ſufficient, if the Inquiſition finds the General Uſe, tho' it varies from the Particular: As, if it finds a Gift for Books for poor Scholars, when it was for Gowns for them; for the Gift for poor Scholars is the General Uſe. *Ibid.*

Or for Stones for the Highway, where the Gift was for Gravel. *Ibid.*

Or finds a Gift for Poor Scholars generally, where it was for two Poor Scholars in the Univerſity. *Ibid.*

Or a Gift for ſuch an Uſe, where it was for ſuch and other Uſes, it is ſufficient for ſo much. *Ibid.*

(N. 17.) What not.

But the Inquiſition muſt be taken within the County where the Land lies. *Duke* 119, 120, 148, 149.

Or where the Commiſſioners have Authority. *Duke* 148.

If the Land lies in ſeveral Counties, there muſt be Inquiſitions taken in all. *Ibid.*

Or if the Commiſſion goes only to One, an Inquiſition may be taken afterwards upon another Commiſſion in the other. *Ibid.*

So the Commiſſioners cannot inquire by the Oath of the Party himſelf. *Duke* 150.

Or by illegal Evidence: As, a Deed cancelled, a Record reverſed, &c. *Ibid.*

So an Inquiſition muſt find the Gift, and alſo the Abuſe, otherwiſe it will be imperfect. *Duke* 149.

It muſt find the general Uſe truly, otherwiſe it is void: As, if it finds a Gift for Poor Scholars, where it was for Soldiers. *Ibid.*

Or a Gift for a Highway, which was for Poor Virgins. *Ibid.*

(N 18.) As to Miſemployment.

So by the *St.* 43 *El.* 4. Commiſſioners may inquire of all Abuſes, Breaches of Truſt, Negligences, Miſemployments, not employing, concealing, defrauding, miſconverting, or miſgoverning of any Lands, Goods, &c. given to any Charitable Uſes before rehearſed.

And therefore every Miſemployment, or Miſgovernment, and every Neglect of employing, or the Defrauding of, the Charity is inquirable. *Duke* 115.

If the Truſtee leaſes at an Undervalue. *R.* 2 *Ver.* 414, 415.

So, if a Man to whom Land is deviſed for a Charitable Uſe by *Covin* with the Heir waives the Deviſe, it is a Fraud inquirable. *Duke* 150.

So, if the Heir refuſes a Legacy for diſcharging a Mortgage that the Land may be ſettled. *Ibid.*

If a Huſband by *Covin* diſagrees to a Gift to his Wife. *Ibid.*

If the Feoffee to a Charitable Uſe aliens in *Mortmain*, and afterwards purchaſes the Land of the King. *Ibid.*

If the Grantee of a Rent for a Charitable Uſe by *Covin* with the *Terretenant* grants the Rent to him. *Duke* 153.

(N. 19.) What Caſes are exempt from the Inquiry.

But by the *St.* 43 *El.* 4. It is provided, that the ſaid Act extend not to Lands, Goods, &c. given to a College, Hall, or Houſe of Learning in the Univerſities of *Oxford*, or *Cambridge*, the Colleges of *Eaton*, *Weſtminſter*, or *Wincheſter*, or any Cathedral or Collegiate Church.

So, if a Gift be to the Univerſity itſelf, it will be exempt. *Duke* 171.

So, by a Proviſo in the ſame Statute, it does not extend to Lands, &c. given to, or in any City or Town Corporate, where a Special Governor is appointed to direct the Diſpoſal.

Nor to any College, Hoſpital, or Free-School, which has a Special Viſitor, Governors, or Overſeers appointed by the Founder.

And this Proviſo extends to the Company of Mercers, Grocers, &c. in *London*. *Duke* 171.

To

To a Gift made to a Corporation, to be employed in another Corporation. *Duke* 172.

Or, to be employed by the Mayor in the ſame Corporation. *Ibid.*

To a Gift to an Hoſpital in Reputation, which has a Governor: As, to the Poor Knights of *Windſor*; for the Dean and Canons of *Windſor* are their Governors appointed by the Founder. *Ibid.*

But the Proviſo does not extend to a Gift to a Corporation not *in Eſſe* at the Time of the Act. *Duke* 171.

Or to a Gift made ſince the Act to a Corporation which was then *in Eſſe*. *Ibid.*

Nor to Goods given to a Corporation; for the Statute ſpeaks only of Lands and Tenements. *Ibid.*

Nor to Land given to a Member of a Corporation, *&c.* and not given to the Corporation. *Duke* 172.

Or a Gift to a Corporation, which is not to be employed there, or in another Corporation. *Ibid.*

[If Lands are given to Truſtees, Governors of a College, Hoſpital or School, for the Uſe of it, and a ſpecial Viſitor is appointed, or One by Operation of Law, the Commiſſion ſhall not interpoſe; but if the Lands are given to ſuch Governors on a collateral Charity (as to mend Roads) it may. *Attorney-General* v. *Harrow School*, *T.* 1754. 2 *Vezey* 551.]

Or when the Governors, *&c.* of the Corporation have no Power to inforce the Employment to the Charity; As, if the Gift is to a College to pay 20*l.* to the Parſon of *D.* to be diſtributed amongſt the Poor of *D.* for the Viſitor, *&c.* cannot compel the Parſon to make Diſtribution. *Duke* 172.

So, if the Governor, *&c.* has no Power to inforce the Employment of the Whole, but only Part of the Charity, it will be exempt for the Whole. *Duke* 172.

So, by a Proviſo in the ſame Statute, no Perſon, who purchaſed for valuable Conſideration without Fraud, and without Notice of the Charitable Uſe, ſhall be impeached, *&c.*

And therefore the Commiſſioners have no Authority to make a Decree againſt a Purchaſer for valuable Conſideration without Fraud or Notice: As, for Money paid, Plate given, *&c.* *Duke* 177.

Land, Rent, Leaſe, Ward, or Title to Land conveyed, *&c.* *Ibid.*

So, if a Debt, *&c.* is releaſed, *&c.* for it is a valuable Conſideration. *Ibid.*

If Rent, or a Fine, is paid upon a Leaſe made. *Ibid.*

But it is no valuable Conſideration, if a Man gives for the Purchaſe Things of Pleaſure, tho' valuable, as Jewels, *&c.* *Ibid.*

A meer Poſſibility in Land, *&c.* *Ibid.*

Money only to Part of the Value. *Ibid.*

So, if the Conſideration is mixt, as for Money and Affection. *Ibid.*

In Conſideration of Money and Marriage. *Ibid.*

So, if the Conſideration is Executory. *Duke* 178.

Or for Payment of Debts of the Vendor, or Portions for his Daughters. *Duke* 177, 178.

So a Leaſe to the full Rent, is not a Deed upon a valuable Conſideration. *Duke* 178.

And the Commiſſioners are not to be ſatisfied by the Mention of the Conſideration in the Deed, *&c.* *Ibid.*

So, if a Gift be to the Poor, *&c.* generally, without Mention of any particular Place, the Commiſſioners have no Authority therein, but it muſt be ſettled in *Chancery*. *Per Finch*, 2 *Lev.* 168.

(N 20.) Decree by the Commiſſioners. Who ſhall be ſummoned by them.

The Commiſſioners before a Decree made by them, ought to ſummon all Perſons concerned in Intereſt. *Duke* 117, 151.

The

The Decree must be made by such Commissioners as were present when the Inquisition was taken. *Duke* 154. *Cont. Duke* 68, 118. (N. 21.) By what Commissioners it shall be made.

The Decree must direct the Employment of the Goods or Lands according to the Intent of the Donor: And therefore, if some of the Lands are given for the Repair of the Church, others for the Relief of the Poor, &c. the Profits cannot be employed promiscuously; but the Rents of each Estate shall be applied to the particular Use for which it was given. *R.* 1 *Ver.* 43. *Per Mo. Duke* 158. (N. 22.) How the Decree shall be made.

If the Gift was to Persons of such Sex, Nation, Trade, Quality or Profession, the Decree must be conformable to it. *Per Mo. Duke* 158.

If the Gift fixes the Number of Persons, who are to take, the Decree must not alter it. *Per Mo. Duke* 157.

If it appropriates it to a Parish, Prison, School, &c. the Decree cannot vary it. *Per Mo. Duke* 158.

Or to a particular Purpose: As, for Diet, Apparel, House of Correction, Ease of Fifteenths, &c. the Decree cannot direct it for other Purposes. *Per Mo. Duke* 158, 160.

Tho' the Land be increased to a greater Value. *R.* 11 *Car. Duke* 68.

All shall be bound by the Commissioners Decree whom the Donor by his Act or Conveyance could bind: As, he, who claims Title under the Donor by Descent. *Per Mo. Duke* 160. *R. Ch. Ca.* 267. (N. 23.) Who are bound by the Decree.

But Persons, who claim *paramount* the Gift or Devise to the Charity, are not bound by the Decree. *R. Ch. Ca.* 267.

Every Decree by Commissioners must be certified to the *Chancery*. *Per Mo. Duke* 164. (N. 24.) It must be certified to *Chancery*.

The Party grieved by the Decree may take Exceptions to it before the Chancellor. 1 *Ver.* 42. (N. 25.) Exceptions to the Decree.

So, after Exceptions by a Lessee over-ruled, his Lessor may take Exceptions to it. 2 *Ver.* 507.

So, after a Decree twice confirmed, upon a Rehearing an Issue may be directed to try the Fact. 2 *Ver.* 507.

If a Decree by Commissioners be certified, and there is no Exception by the Party aggrieved within a reasonable Time, he shall be concluded thereby, without more. *Ch. Ca.* 194. (N. 26.) *Chancery* may confirm and make Execution.

If Exception be taken and disallowed, the Decree shall be confirmed.

After Confirmation, the Chancellor may award Execution in what Manner he pleases. *Per Mo. Duke* 166.

The most usual Course is to make a Writ of Execution upon the Statute, and afterwards an Attachment, and then he shall be imprisoned till Performance. *Ibid.*

Or he may award an *Elegit* or *Fieri facias*. *Ibid.*

So, if the Decree transfers the Property of the Land or Goods to another, he, to whom decreed, may take or enter without a Writ of Execution. *Per Mo. Duke* 164.

If it decrees a Lease to be void, He in Reversion may enter. *Ibid.*

If it decrees a Deed, &c. to be delivered, it may be delivered without a Writ of Execution. *Ibid.*

If a Rent to be discharged, it may be executed by Way of Retainer. *Ibid.*

But, if the Decree appears to be out of the Power of the Commissioners, contrary to the Statute or Common Law, or Ecclesiastical Law, or Intent of the Donor, the Chancellor may annul it. *Per Mo. Duke* 164. *Eq. Ca.* 65. (N. 27.) Or enlarge or annul it.

So, upon a Suggestion, without Bill it may be annulled; if made without Authority: As, if the Precept was only by three Commissioners, or there was no Inquisition. *Per Mo. Duke* 163, 164.

So, if the Exception taken be allowed, it ſhall be annulled.

But, if the Decree is only voidable, it ſhall not be annulled without Bill. *Per Mo. Duke* 163.

As, if the Party was not ſummoned, or a legal Challenge diſallowed, *&c. Ibid.*

So, if a Suggeſtion is made, it muſt be proved immediately, otherwiſe Execution ſhall not be ſtaid. *Per Mo. Duke* 165.

So Execution ſhall not be ſtaid, if the Matter ſuggeſted is only Irregularity: As, Diſproportion in Allowances, *&c. Per Mo. Duke* 163.

So it ſhall not be annulled for Matter ariſing after the Decree: As, if Aſſets fail after a Decree againſt an Executor or Adminiſtrator; for it was his Default, it was not performed before. *R. Mo.* 823.

So, if the Commiſſioners by Decree direct Payment of 85*l.* the Chancellor may increaſe it to 170*l.* *R.* 5 *Car. Duke* 32.

If Commiſſioners are deſignedly vexatious, *Chancery* may puniſh them, but otherwiſe they pay no Coſts. *Eq. Ca.* 65.

The Decree by *Chancery* ſhall be final, and no Appeal lies to Parliament. 2 *Ver.* 118.

Nor ſhall there be a Rehearing upon it. *Semb.* 2 *Ver.* 118.

But *Chancery*, after a Decree which takes away a Truſt from a Corporation for not paying 4000*l.* to a Charity, may, upon Payment, reveſt the Truſt in them, tho' the former Decree was ſigned, inrolled, exemplified, and the Conveyance to other Truſtees executed. *Dub. Eq. Ca.* 7.

Vide more concerning *Uſes* in *Chancery*, (2 N. 1, &c.)—*Remitter*, (C. 6.)

USURPATION.

——of a Church.

Vide Egliſe, (H. 14, 15.)

——by the Pope.

Vide Popery, (A. 1, &c.—B. 1, &c.)

USURY.

(A) Uſury, what ſhall be.

USURY was an Offence by the Common Law, and upon Conviction the Uſurer forfeited his Goods to the King, and his Lands to the Lord of the Fee. 2 *Rol.* 800. 3 *Inſt.* 151, 152.

If it was ſuch Uſury as the Jews took, *viz.* 40*l. per Centum per Annum.*

By the *St.* 37 *H.* 8. 9. (by which all former Statutes againſt Uſury are repealed) no Perſon by Way of corrupt Bargain, Loan, *&c.* or other Mean, ſhall take for Forbearance of 100*l.* or other Thing due for Wares, *&c.* for one whole Year above 10*l. per Centum*, and ſo *pro Ratâ*, *&c.*

And no Perſon, who takes a Mortgage of any Lands, *&c.* on Condition, for Payment of Money, *&c.* ſhall have or take in Lucre, or out of the Profits of ſuch Lands, above 10*l. per Cent.* for a Year, and ſo after that Rate, *&c.*

By

By the *St.* 13 *El.* 8. (by which 5 & 6 *Ed.* 6. 20. for Repeal of the *St.* 37 *H.* 8. 9. was repealed, and the ſame *St.* 37 *H.* 8. 9. was revived) all Bonds, Contracts, and Aſſurances for Payment of Money upon Uſury contrary to the ſaid *St.* 37 *H* 8. 9. ſhall be void.

And the ſaid Statute now revived ſhall be conſtrued moſt ſtrongly for the Suppreſſing of Uſury.

By the *St.* 21 *Ja.* 17. No Perſon ſhall take above 8 *l. per Cent.* and ſo *pro Rata, &c.*

And by the *St.* 12 *Car.* 2. 13. No Perſon upon any Contract ſhall take directly or indirectly for Loan of any Money or Wares, *&c.* above the Value of 6 *l.* for Forbearance of 100 *l.* for a Year, and ſo after that Rate, *&c.* Nor by the *St.* 12 *An.* 16. above the Value of 5 *l. &c.*

And by the *St.* 21 *Ja.* 17. & 12 *Car.* 2. 13. All Bonds, Contracts, and Aſſurances, whereby ſhall be taken above ſuch Rate, ſhall be void. So by the *St.* 12 *An.* 16.

And therefore, where a Man gives a Bond or other Aſſurance for Payment of an Intereſt for Money above the Rate allowed by the Statute, it will be void.

Or, if the Loan was of Goods, or any other Thing, and not Money. *Mo.* 398.

So, if upon an uſurious Contract, he gives a Mortgage for Security of the Principal only, and takes a Bond for the Intereſt, the Mortgage as well as the Bond ſhall be void. *R.* 2 *Cro.* 508.

So, if the Allowance beyond the Rate of the Statute be by a Mean and indirectly: As, if a Man contracts to have 6 *l. per Cent.* and deducts the Whole at firſt before the Creditor has the Money. *D.* 2 *Cro.* 26. *Mo.* 644.

[*A.* indorſes a Note for 200 *l. B.* takes the Note on advancing 197 *l.* three Months before due, and at the End of the three Months takes another Note for 200 *l.* on advancing 3 *l.* for other three Months; this is Uſury within *ſtat.* 12 *Ann. c.* 16. *Maſſa* v. *Dauling*, *M.* 19 *G.* 2. *Str.* 1243.]

So, if it be upon a Contingency whether he ſhall have above the Allowance, or no Intereſt, when there is not any Hazard of the Principal: As, an Agreement for Payment of 100 *l.* for Wares within a Month, or otherwiſe 120 *l.* at the End of a Year. *R. Mo.* 397. 5 *Co.* 70. *a.* 2 *Cro.* 508.

Or, for Payment of the Principal, and 10 *l. per Centum* ſo long as *A.* ſhall live. *R. Mo.* 398. *R.* 2 *Cro.* 508.

Or, for Payment of 20 *l.* and to pay 10 *l.* for Intereſt at the End of the Year, if *A.* be then alive. *R. Cro. El.* 642. *Mo.* 398. 5 *Co.* 69. *b.*

Or, to pay 300 *l.* for 100 *l.* if any of his Children be alive two or three Years after, when he has many Children then alive. *Cro. El.* 741. *R.* 2 *Cro.* 253, 507.

So, tho' there be a ſmall Riſk of the Principal: As, if the Agreement be for 100 *l.* to pay 400 *l.* at the End of 10 Years, if any of his five Daughters are then living. *Dub. Cro. El.* 741.

Or upon a Loan of 300 *l.* to pay 22 *l.* in three Months and 300 *l.* with 6 *d. per* Pound *Premium* within ſix Months, if *A.* is then living, who was then of the Age of 38 Years and in Health. *R. Carth.* 68. *R.* 2 *Rol.* 47.

Or, to pay 3 *s. per* Month for 7 *l.* after one Month, if it be not then paid. *Semb. Jon.* 410.

So where Words are colourably added to avoid the Statute, which may be averred: As, if the Agreement be to pay for 100 *l.* 20 *l. per An.* from *Michaelmas* next, if it be not repaid before *Michaelmas*, where it was agreed that it ſhould not be repaid before. 5 *Co.* 69. *b.*

Or, if for 100 *l.* he grants an Annuity with an Intent to elude the Statute. *Per Ch. Bar.* *Cro. El.* 28. *R.* 2 *Lev.* 8.

If upon an Uſurious Contract ſeveral Securities are given, one for *Intereſt*, and another for Principal. 2 *Cro.* 508.

If a *Feme Covert* acts as a Pawnbroker and lends Money upon an Uſurious Contract, and takes a Bond for it to her Huſband, the Bond ſhall be avoided by Pleading

Pleading the Statute, tho' the Husband is not chargeable for the Usury *criminaliter*. *R. Skin.* 348.

[By *stat.* 14. *G.* 3. *c.* 79. The lawful Interest in *Ireland*, or the Colonies, may be taken for Money lent in *England* on Mortgages of Land or Goods in these Countries, and the Deeds executed in *England* are good. The Deeds must be registered according to the Laws of these Countries.]

(B) What not.

BUT a Loan of 100 *l.* upon a Contract to pay the Interest by Half-yearly Payments, *viz.* a Moiety at *Michaelmas*, and the other Moiety at *Lady-Day*, is not Usurious, tho' the Advantage of the Interest before the End of the Year makes it above the Rate allowed by the Statute; for it is according to such Rate, and this is *pro Rata* of the Statute. *R. per* 3 *J.* 2 *cont.* 2 *Cro.* 26. *Yel.* 30. *Mo.* 644. *R. Cro. Car.* 283. *Jon.* 396.

So, if the Contract be for 100 *l.* and the Interest *per An.* and he accepts the whole Interest within the Year. *R.* 1 *Bul.* 17. *Semb. cont.* where the Whole was deducted at the Time of the Loan. *Mo.* 644. 2 *Cro.* 26.

So, if by Mistake the Words require Payment before the Time agreed, it will be no Usurious Contract; tho' the Interest exceed the Statute, if payable at the Time limited: As, if a Bond 1 *April* be to pay 105 *l.* on 21 *April* next, where the Agreement was for a Year next. *R.* 2 *Cro.* 677. *R.* 2 *Vent.* 83.

If, in a Mortgage, the Clause for the Mortgagor to take the Profits till Default be omitted. 2 *Mod.* 307.

Tho' the Plaintiff had Notice of the Mistake before Action brought. 2 *Vent.* 83.

So, if the Bond was intended to be payable at the End of the Year, and by Mistake it is made payable at six Months. *R. Cro. Car.* 501. *Jon.* 396.

So, if there be a corrupt Agreement, to which the Plaintiff was not privy, it shall be no Prejudice to him: As, if *A.* be indebted to *B.* in 100 *l.* for which *A.* and *C.* give a Bond to *B.* and it is agreed between *A.* and *C.* that *A.* shall give 30 *l.* to *C.* for Forbearance of 100 *l.* which *A.* owes to *C.* and shall be bound to *C.* for this 30 *l.* and *A.* and *C.* are bound to *B.* for the 100 *l.* the Bond to *B.* being for a just Debt, tho' made upon an Usurious Contract, to which *B.* was not privy, it shall not be avoided. *R. per* 3 *J.* 2 *Cro.* 33. *Yel.* 47. *Mo.* 752. *Acc. per Holt, T.* 8 *W.* 3. *Inter Hussey and Jacob.* (*Reported in Comyns's Rep.* 4.)

And it is sufficient that *B.* replies that he was not privy, without traversing the Corrupt Agreement. *R.* 2 *Cro.* 33.

So, if, after a Bond upon an Usurious Contract, *A.* gives a Counterbond to indemnify the Obligor from such Bond, and he is thereby damnified, the Counterbond is in Force, tho' the first Bond was Usurious. *R. Cro. El.* 642. *Noy.* 73. *R. Cro. El.* 588. for the Surety perhaps was not privy to the Usury.

So, if, after a Contract made *bonâ Fide*, there is a subsequent Agreement for a Rate above the Statute for further Forbearance, the last Contract only will be void, and not the first. *R. Cro. El.* 20. *R.* 1 *Sand.* 294. *Acc.* 2 *Mod.* 307.

So, if a Bond or Recognizance be forfeited, and it is afterwards agreed to accept more Interest than the Statute allows, and to make another Defeasance, it is no Usury; for the Forfeiture of the Recognisance, *&c.* is to be considered. *R. Noy* 2.

So, if there be a Hazard of the Principal, it will not be Usury, tho' the Interest upon a Contingency may exceed 6 *l. per Cent'.*: As, if a Wager be to give 40 *l.* for 20 *l.* paid, if *A.* is alive at the Year's End. *Cro. El.* 643.

So, if there be an Agreement for 100 *l.* to pay 80 *l.* to each Daughter (and he has then five) who shall be living at the End of 10 Years. *R. Cro. El.* 741.

[So

[So if for two Guineas received, a Man promiſes to pay 20 on his Wife's Death, who is 70 Years of Age. *Lamego* v. *Gould*, *H.* 32 *G.* 2. 2 *B. M.* 704.]

Or for 50 *l.* to pay 60 *l.* at the Return of a Ship) which may return in five Months) or if it never returns, Nothing. *R.* 2 *Cro.* 209, 508. *Acc. Sho.* 8.

Or at the Return of a Ship, Goods, or Owner; for it is a Bottomry Contract. *R.* 1 *Lev.* 54. *R. Hard.* 518. *Acc.* 2 *Rol.* 48.

Or for 100 *l.* to pay an Annuity of 50 *l.* a Year for Life, tho' there is a Mortgage for Repayment of the 100 *l.* if the Annuity is not paid; for it is a Purchaſe, and, upon the Death of *Ceſtui que Vie*, the Money is loſt. *R.* 2 *Cro.* 252. 1 *Bul.* 36. *R. Cro. El.* 27, *Per Twiſd.* 1 *Sid.* 182.

[If 2000 *l.* is lent, on Condition to pay the Principal and 200 *l.* in a Year, or 250 *l. per Annum* for the Life of the Borrower, it is not an uſurious Contract. *Wortley* v. *Pit*, *M.* 1748. 1 *Vezey* 164.]

[So, if *A.* for 120 *l.* grants an Annuity of 20 *l.* out of a Living, by Deed, with Promiſe for Redemption in five Years, and gives Bond for Performance, this is not Uſury, tho' the Words *borrow* and *lend* are uſed. *Murray* v. *Harding*, *H.* 13 *G.* 3. 3 *Wilſ.* 390.]

Or for 100 *l.* to pay 20 *l.* a Year from *Michaelmas* next, if the 100 *l.* is not repaid before *Michaelmas*, for he may repay it before *Michaelmas* without Intereſt; if this was the true Intent. 5 *Co.* 69. *b.*

Or if for 300 *l.* a Leaſe is made to *B.* at 35 *l. per An.* of a Houſe of which the Rent was only 5 *l.* with a Covenant to convey to him, if *B.* repaid the 300 *l.* in four Years; for it was at the Election of *B.* to repay or not. *R.* 2 *Lev.* 7.

[So if *A.* lends *B.* 100 *l.* for four Years without Intereſt, in conſideration that *B.* ſhall provide Meat and Drink for *A.*'s Daughter *C.* who is to be Partner with *B.*'s Wife, have half the Profits, and bear half the Loſs, and to lodge *A.* for 10 *l. per An.* it is not uſurious, though the Board of *C.* and Lodging of *A.* might be worth 30 *l. per Ann.* *Moriſſet* v. *King*, *M.* 33 *G.* 2. 2 *B. M.* 891.]

[By *ſtat.* 17 *G.* 3. *c.* 26. A Memorial of all Deeds, &c. for Grant of Annuity for Life, ſhall in twenty Days be enrolled in Chancery, or ſhall be void; ſo of Judgment on Warrants of Attorney for that Purpoſe. Deeds muſt contain the Conſideration.]

(C) Puniſhment of Uſury.

BY the *St.* 13 *El.* 8. 21 *Ja.* 17. *and* 12 *Car.* 2. 13. All Bonds, Contracts, &c. upon Uſury are void. *Vide Ante*, (A,)

How the Statute ſhall be pleaded to ſuch a Bond, &c. *Vide in Pleader*, (2 W. 23.

By the *St.* 13 *El.* 8. Perſons taking Uſury not above the Rate mentioned in that Statute ſhall forfeit ſuch Intereſt, &c.

By the *St.* 37. *H.* 8. 9. and 12 *Car.* 2. 13. If any by Way of Corrupt Bargain, &c. take more than is allowed by Statute for Forbearance of Money or other Thing, he ſhall forfeit treble the Value of the Monies, Wares, &c. lent, &c. a Moiety to the King, a Moiety to him who will ſue for the ſame.

And tho' the firſt Contract was not Uſurious; if a Man takes afterwards above the Allowance of the Statute for the Loan of Money, &c. an Information lies upon ſuch Statute. 1 *Sand.* 295. *R.* 1 *Vent.* 38. *Ray.* 196.

And, if there be an Uſurious Contract to pay 20 *l.* for Forbearance of 100 *l.* an Information lies, tho' he does not take above the Legal Intereſt. *R.* 1 *Vent.* 38. *Ray.* 126. *Per Twiſd.* 1 *Mod.* 69.

So, tho' he takes but a Penny of the Intereſt upon ſuch Agreement. *Cro. El.* 20.

So, if a Feoffment, Leaſe, &c. be made upon an Uſurious Contract, it will be void, as well as a Bond. *Jon.* 303.

[But an Indictment for Uſury lies not for a corrupt Agreement, without Loan, or taking, in purſuance of it. *Rex* v. *Upton*, *M.* 2 *G.* 2. *Str.* 816.]

So, if an Usurious Contract be for 20 *l.* for Forbearance of 100 *l.* and he takes no Part of the 20 *l.* an Information does not lie against him. *R. Cro. El.* 20.

[When the Usurious Contract, the Lending, the Forbearance, or Interest, concur, then the Offence is committed, and the Action must be brought on 12th *Ann.* within a Year from that Day, nor does Part of the Penalty being to the King avail. *Lloyd* v. *Williams. M.* 12 *G.* 3. 3 *Wilf.* 250.]

[The Court will permit Prosecutor to compound, *Barnes* 118.]

(D) Punishment of Brokage.

So by the *St.* 12 *Car.* 2. 13. Scrivener, Broker, Solicitor, *&c.* who shall directly or indirectly take any Money or other Reward, above the Value of 5 *s.* for procuring the Loan or Forbearance of 100 *l.* for a Year, and so *pro Rata*, *&c.* or above 12 *d.* for making or renewing a Bond or Bill for such Loan, or for a Counterbond concerning the same, shall forfeit 20 *l.* for every Offence, and be imprisoned for half a Year; a Moiety to the King, a Moiety to him who will sue for the same.

But an Agreement by *A.* to give *B.* 200 *l.* if he procures 5000 *l.* to be paid in his Name upon an Aid granted by Parliament, does not appear to be Brokage; for the Borrower pays Nothing, and the Lender receives Nothing. *R. Skin.* 322.

Vide more concerning *Usury* in *Pleader*, (2 *G.* 7.)

OUTLAWARY.

(A) Outlawry.

A Man outlawed is, when by Judgment of Law a Man by his own Default is ousted of the Law. *Co. L.* 122. *b.* 128. *b.*

For every Man at his Age of 12 Years ought to be sworn to the Law in a Tourn or Leet, and by his Outlawry he is *positus extra Legem*. *Co. L.* 122. *b.*

A Woman, who does not swear to the Law, by Judgment of Outlawry, is not said to be outlawed, but *Waiviata*. *Co. L.* 122. *b.*

And therefore, if a Woman is said to be *utlagata*, it will be Error. *R.* 2 *Rol.* 804. *l.* 5.

(B) In what Cases it lies.

A Man shall be outlawed for his Default, if he will not stand to the Law: And therefore upon an Indictment for Treason or Felony, if the Defendant does not appear upon the second *Capias*, he shall be outlawed. *Vide Indictment*, (I)

So in an Appeal. *St. P. C.* 60. *a.* 67. *Vide Appeal*, (G. 5.)

And if he does not render himself within a Year, he shall be executed without other Judgment or Trial. 3 *Mod.* 42, 72.

[It lies on an Information. *Rex* v. *Wilkes. T.* 8 *G.* 3. 4 *B. M.* 2527.]

[And in an Information for any Offence, in its Nature against the Laws of Society, and that disturbs the good Order which keeps a State in Peace, (the true Meaning of *contra Pacem*) tho' not with actual Force. *Ibid.*]

So upon an Indictment for a Misdemeanor or Information, he shall be outlawed, but he shall not be fined thereon without other Conviction for the Offence. *Vide Information*, (D. 1.)

So,

So, if a Peer does not appear upon an Indictment for Treaſon or Felony, he ſhall be outlawed. 3 *Inſt.* 31.

But where a *Capias* does not lie in *Proceſs*, the Defendant cannot be outlawed before or after Judgment: As, upon a Writ of Privilege by an Attorny or another. *R.* 1 *Leo.* 329.

[It lies not for leſs than 10 *l. Semb. Sed Q. Barnes* 320.]

[If Defendant avoids Arreſt, though he appears publickly, he may be outlawed. *Barnes* 320.]

[On total abſconding, no Endeavours to arreſt are neceſſary. *Barnes* 322.]

How to proceed to Outlawry. *Vide* in *Pleader*, (2 W. 4, &c.)

(C) How an Outlawry ſhall be avoided.

(C. 1.) For what Cauſes.

OUTLAWRY ſhall be avoided, if the Perſon outlawed, at the Time of the Outlawry pronounced, was within the Age of Diſcretion: As, if he was an Infant under fourteen Years. 2 *Rol.* 805. *l.* 10. *R. Dy.* 239. *a. Bend. pl.* 205.

So, if a Woman, at the Time ſhe is waived, was *Covert Baron*. 2 *Rol.* 806. *l.* 45.

So, if a Man, at the Time of his Outlawry, was in Priſon, it will be Error. *Lit. S.* 437. 2 *Rol.* 803. *l.* 35.

Though the Outlawry was for Felony, or in a Perſonal Action. 2 *Rol.* 803. *l.* 35.

But Impriſonment is no Cauſe to avoid an Outlawry, if it be by *Covin* or Conſent. *Co. L.* 259. *b.*

If a Man in Priſon, brought to the Bar, will not appear. *R.* 2 *Rol.* 804. *l.* 50.

So, if a Man, at the Time of his Outlawry, was out of the Realm, it will be Error. *Skin.* 6.

If a Man was in the King's Service with a Captain, *&c.* in War. 2 *Rol.* 803. *l.* 42. 804. *l.* 15.

Or about the King's Buſineſs, by his Command under Letters Patent. 2 *Rol.* 803. *l.* 40. 804. *l.* 15.

So, if he was out of the Realm for his own private Buſineſs, or for his Pleaſure, and not upon the Buſineſs of the King, or the Realm. 2 *Rol.* 804. *l.* 20. 2 *Rol.* 11, 12.

Tho' he be outlawed for Felony, or in a perſonal Action. 2 *Rol.* 804. *l.* 35. *Skin.* 16.

So, if he goes out of the Kingdom upon the Buſineſs of the King or the Realm, after *Exigent* pronounced, he ſhall avoid the Outlawry afterwards. *R.* 2 *Rol.* 804. *l.* 40.

But, if a Man goes voluntarily out of the Kingdom after *Exigent* for Felony pronounced, he ſhall not avoid the Outlawry afterwards pronounced. *R.* 2 *Rol.* 804. *l.* 30.

If it appears upon the Record, or Confeſſion of the King's Attorny. *Semb.* 2 *Rol.* 12.

So Outlawry for Treaſon cannot be avoided, becauſe the Party was out of the Realm; for by the *St.* 26 *H.* 8. 13. and 5 & 6 *Ed.* 6. 11. Proceſs and Outlawry againſt any for Treaſon, who is out of the Realm, ſhall be as good as if then reſident in the Realm. 3 *Inſt.* 32.

So an Outlawry may be avoided, if the Perſon outlawed be miſnamed, or his Addition miſtaken: As, if he be named *Knight*, when he was a *Baronet*. *R. Comb.* 184.

If he be outlawed by Judgment of the *Coroners* without naming them, except in *London* where the *Mayor* is Coroner, and therefore *Ideo Utlagat' eſt* is ſufficient without more. *R.* 2 *Cro.* 528, 531.

So

So by the *St.* 5 & 6 *Ed.* 6. 11. If any, outlawed for High Treaſon, within one Year after yield himſelf to the Chief Juſtice, and offer to traverſe the Indictment on which he was outlawed, he ſhall be admitted ſo to do, and, being acquitted of the Indictment, ſhall be diſcharged of the Outlawry.

So, by Conſent of the *Attorny General*, he may reverſe the Outlawry for Error. 3 *Mod.* 42.

And ſhall aſſign Error at the Bar, in proper Perſon *Ore tenus*, and then the Court aſſigns Council to argue it. *Skin.* 16.

But the *St.* 6 *Ed.* 6. does not extend, where the Outlaw is apprehended, and does not render himſelf. *R.* 3 *Mod.* 47.

[A Perſon committed for High-Treaſon in diminiſhing the Coin, who makes his Eſcape before Indictment, and is then indicted and outlawed, and then retaken within the Year, may have *Habeas Corpus* to *B. R.* and ſurrender; then have *Certiorari* to remove the Proceedings, plead his having been beyond Sea, and have the Outlawry reverſed. *Rex* v. *Roger Johnſon. H.* 2 *G.* 2. *Str.* 824.]

So an Outlawry for High Treaſon ſhall not be reverſed, becauſe Proceſs was awarded againſt him when out of the Realm, for by the *St.* 26 *H.* 8. 13. and 5 *Ed.* 6. 11. ſuch Proceſs is good. 3 *Inſt.* 32, 216. *Dy.* 287. *a.*]

[When there has been Miſbehaviour in Plaintiff, the Court will oblige him to reverſe an Outlawry at his own Coſts; but if it is a Miſtake or Error in Law, it muſt be by Writ of Error. *Lloyd* v. *Williams, P.* 8 *G.* 2. *B. R. H.* 123.]

[Outlawry ſhall not be ſet aſide for Irregularity, on Motion, becauſe it is on Debt by Original in *B. R. Bounds* v. *Allen, M.* 10 *G.* 2. *B. R. H.* 317.]

[If in Debt on Bond by Wife *dum ſola*, the Huſband is gone abroad and outlawed, and the Wife, though ſhe appears publickly, is waived, the Outlawry againſt her ſhall be ſet aſide on Motion; but Goods taken on *cap. utlagat.* muſt be deemed the Huſband's, though ſworn to be her ſeparate Goods; and if ſhe has equitable Right, ſhe muſt apply in Equity. *Biſcoe* v. *Kennedy, T.* 33 & 34 *G.* 2. 2 *Wilſ.* 127.]

[If Defendant was Priſoner pending Exigent, Outlawry ſhall be reverſed on common Appearance. *Barnes* 321.]

[Where Outlawry is not ſpecial, Defendants may reverſe at their own Expence, and Payment of Coſts on common Appearance: if before tranſcribing into the Exchequer, common Coſts to the Exigent; if after, Coſts to the Time of Reverſal. *Barnes* 324.]

[If Plaintiff dies after Judgment, there muſt be *Scire facias*, or Outlawry ſhall be ſet aſide. *Barnes* 325.]

[Outlawry commenced and proſecuted during Defendant's Reſidence in *Ireland*, ſhall be reverſed without Bail or Appearance. *Barnes* 325.]

[Before Defendant is returned outlawed, he may ſuperſede Exigent on Appearance and Coſts, but after, there muſt be Bail, who are bound to pay the Money, without Option to render Principal. *Barnes* 326.]

[The Court will ſtay Proceedings on Payment of Debt and Coſts in a Month. *Ibid.*]

[If *Feme* ſole is waived ſpecially on meſne Proceſs, and after Exigent and before Outlawry marries, the Court will not interpoſe. *Barnes* 321.]

[Proceedings ſhall not be ſtaid becauſe Plaintiff died before Return, if after Day of Outlawry. *Barnes* 323.]

(C. 2.) When avoided.

(C. 2.) By Plea.

An Outlawry may be avoided in two Manners, by Plea, or by Writ of Error. *Co. L.* 259. *b.*

If an Outlawry be voidable for Matter appearing upon the Record, the Party in the ſame Term may reverſe it by Plea. *Co. L.* 259. *b. Bend. pl.* 137.

As, for Omiſſion of any Proceſs. *Co. L.* 259. *b.*

Or Variance. *Co. L.* 259. *b.*

If

If Outlawry does not lie in ſuch Caſe. *Semb. Dy.* 223. *a.*

Or Proceſs was ſuperſeded before Outlawry pronounced. *Dy.* 223. *a. Bend. pl.* 15. *R. Mo.* 73. 1 *And.* 36.

If no Proclamation where the Party was Commorant at the Time of the *Exigent*, *R. Dy.* 214. *Bend. pl.* 155. 1 *And.* 36.

Or no Addition to the Defendant. *R. Bend. pl.* 212. *Mo.* 70.

If no Return upon Proceſs.

Or the Sheriff was removed, and another appointed upon Record before the Return. *R. Dy.* 41. *b.*

So for any Cauſe, except Want of Proclamations, the Party ſhall avoid the Outlawry upon Motion, where he comes in *Gratis* upon the *Exigent*, *Alias* or *Pluries*. *Sal.* 496.

So, if he comes in another Term. 1 *And.* 36.

So *in Favorem Vitæ*, Outlawry in Felony may be reverſed by Plea, if it be voidable, for Death, Impriſonment, out of the Realm, *&c. Co. L.* 259. *b.*

But in *B. R.* an Outlawry ſhall not be reverſed by Plea, but by Error only, in the ſame Term as well as in another, tho' it be Error appearing upon the Record. 1 *Rol.* 743. *l.* 10.

If a Man comes in upon the Return of the *Capias Utlagatum*, he may plead in Avoidance of the Outlawry a Matter which may avoid it by Plea. *Co. L.* 259. *b.*

And upon the Plea and Security given, there ſhall be Reſtitution of the Goods. *Hard.* 98.

So, if there be Matter, appearing upon Record, to avoid the Outlawry, the Party, who appears as *Tertenant*, muſt demur, upon Return of the Inquiſition taken upon the *Capias Utlagatum*. *Hard.* 58, 59.

And ſeveral *Tertenants* may join in Demurrer. *Hard.* 59.

So a *Tertenant* may plead to the Inquiſition.

[The Priſoner muſt firſt plead to the Outlawry, and that muſt be tried before he can plead to the Indictment. *Rex* v. *Johnſon*, *H.* 2 *G.* 2. *Str.* 824.]

[He may plead *Ore tenus*, the Attorney-general reply *Ore tenus*; the *Venire* is awarded returnable *Inſtanter*; the Jury returned ſitting the Court; he may have Counſel; he has no peremptory Challenge. *Ibid.*]

[The Court cannot aſſign Defendant Counſel on an Outlawry for Treaſon till he has pleaded, and then he may have Counſel on the collateral Matter. *Rex* v. *Davis*, *T.* 31 *G.* 2. 1 *B. M.* 638.]

[The Court will allow Attorney-general to confeſs Error in Fact, though not true; but not Error in Law, if not true. *Ibid.*]

[If Defendant pleads, not the ſame Perſon, it is tried *Inſtanter*. *Ibid.*]

[If an Exception goes to ſhew that the Outlawry is a Nullity, it avoids it without Writ of Error. *Ibid.*

[If Error in Fact is alledged, the Court may give Defendant Leave to plead to the Indictment; if Error in Law, there muſt be Writ of Error. *Ibid.*]

(C. 3.) By Motion.

So a Man, *Ut Amicus Curiæ*, may avoid an Inquiſition upon an Outlawry, by Matter apparent in it, upon Motion. *R. Hard.* 86.

[It is diſcretionary, when to reverſe on Motion or not; if Defendant hath been long Abroad, the Court will not reverſe at Plaintiff's Expence. *Barnes* 324, 325, 326.]

[The Court will not ſet aſide Outlawry for Want of Proclamation on Motion. *Barnes* 323.]

(C. 4.) By Error.

But, generally, where the Outlawry is voidable for Matter of Fact, if it be not in Felony or Treaſon, it muſt be avoided by Writ of Error. *Co. L.* 259. *b.*

So an Outlawry may be reverſed by Error, in Treaſon or Felony.

[A Writ of Error on an Outlawry (even for Felony) is never denied, if the Witneſſes are living. *Rex* v. *Macartney*, *T.* 2 *G. Fort.* 38.]

[The Attorney-general will not grant Fiat for Writ of Error till Defendant is in actual Cuſtody on *Cap. Utlag.* *Rex* v. *Wilkes*, *P.* 8 *G.* 3. 4 *B. M.* 2527.]

And in Treaſon there is no need of a *Scire facias* to the Lords mediate or immediate; for no Forfeiture accrues to them. *R.* 4 *Mod.* 366.

So, in Felony, if it be ſuggeſted that he has no Lands, and the *Attorney-General* confeſſes it, there is no Need of a *Scire facias*. *Sal.* 495.

Otherwiſe, where the Defendant has Lands, which for Felony are forfeited to the Lord of whom held. *Ibid.*

If two are outlawed in the ſame Action, and only one appears to reverſe it, Error ſhall be in the Name of both, till the other appears, and is ſummoned and ſevers. *R. Sal.* 496.

And he was obliged to appear in Perſon, till the *St.* 4 & 5 *W.* & *M.* 18. *Vide Attorney*, (B. 6.)

[A Perſon outlawed for Want of Appearance to an Indictment, for a Libel againſt the Government, ſhall have a Writ of Error, and be admitted to Bail. *Rex* v. *Earbery*, *P.* 9 *G. Fort.* 37.]

[No Bail is given in Error of an Outlawry, till Reverſal; and then it is to appear to an Original, to be brought in two Terms. *Ducket* v. *Martin*, *T.* 6 *G.* 2. *Str.* 951.]

If Error is brought, and the Attorney-General confeſſes it, it ſhall be reverſed, and the Defendant immediately tried upon the Indictment. *Sal.* 495.

If he aſſigns Error for being out of the Realm, it is ſufficient to ſay generally *quod Tempore Utlagar' fuit*. *R.* 2 *Rol.* 12.

Tho' he goes after the *Exigent*; for, if he was then here, it ſhall be ſhewn on the other Part. *R.* 2 *Rol.* 804. *l.* 45.

[Outlawing a Man beyond Sea is Error, not Irregularity. *Barnes* 319.]

(C. 5) Party reſtored after Reverſal.

If the Outlawry is reverſed, the Party ſhall be reſtored to all he loſt.

If a Term be ſold by the King, he ſhall be reſtored to the Term. *Per* 2 *J. Cro. El.* 278. *R.* 1 *And.* 277. *R.* 2 *Ver.* 315.

If a Leaſe be made by the *Exchequer* to the Plaintiff of the Lands of the Outlaw, and he levies the Profits by *Exchequer* Proceſs, which by Order of the Court are delivered to him; yet they ſhall be reſtored upon the Reverſal of the Outlawry. 2 *Jon.* 101.

But, if the King's Leſſee be outlawed, his Term ſhall not be reſtored; for it was extinct. *R. Mo.* 237.

So he ſhall have all his Lands and Tenements.

Tho' the King has granted them to another and his Heirs. 1 *And.* 188.

And he may enter, upon Reverſal of the Outlawry, without Petition or *Scire facias*. *R.* 1 *And.* 188.

So he ſhall be reſtored to a Preſentation to an Advowſon.

So to all his Goods and Chattels.

To his Stock in the *Eaſt-India* or any other Company, tho' granted to another by Privy Seal. 2 *Ver.* 313. 2 *Lev.* 49. *cont.*

So, if the King's Grantee acknowledges Satisfaction upon a Judgment, it ſhall be ſet aſide in Equity, and Reſtitution made. 2 *Ver.* 313.

So a Leſſee of the Outlaw ſhall have Treſpaſs for the Profits received between the Aſſignment to him and the Reverſal. *R. Cro. El.* 270.

But the Profits of the Lands, received during the Outlawry, ſhall not be reſtored. 2 *Ver.* 313.

Nor *Eaſt-India* Stock granted to *A.* by Privy Seal, and transferred to him by the Company, where the Reſtitution was to all *quod non fuit nobis reſponſum*. *R.* 2 *Lev.* 49.

(D)

(D) Forfeiture by Outlawry.

(D. 1.) In Treaſon or Felony.

IF a Man is outlawed for Treaſon or Felony, he forfeits all his Lands and Tenements, Goods and Chattels. *Vide Forfeiture*, (B. 1, &c.)

So Money received by his Servant, and brought to his Houſe, tho' not delivered to him. *Sav.* 40.

(D. 2.) In Perſonal Actions.

(D. 2.) What Things are forfeited.

A Man outlawed in a Perſonal Action forfeits his Goods and Chattels. 2 *Rol.* 806. *l.* 40. 1 *Sal.* 395.

And his Chattels real, as a Term for Years, *&c.* 2 *Rol.* 806. *l.* 43.

And the Truſt of a Term. 1 *Sal.* 109. *R. Hob.* 214. *Hard.* 496.

If Tenant at Will ſows his Lands and is outlawed, the King ſhall have the Emblements. 2 *Rol.* 806. *l.* 50.

If a Church is void, and afterwards the Owner is outlawed, it ſhall be forfeited to the King. 2 *Rol.* 807. *l.* 17. *Ca. Parl.* 75.

So, if the Church becomes void after the Outlawry, the King ſhall preſent. 2 *Rol.* 807. *l.* 45.

So the King ſhall have all the Profits of his Freehold Lands. 2 *Rol.* 807. *l.* 32.

So, if the Leſſor is outlawed, the King ſhall have the Profits of his Tenant at Will; for by the Outlawry the Will is determined. 2 *Rol.* 807. *l.* 35.

So, if a Man be outlawed after a Judgment recovered by him, the King ſhall have the Profits of all the Defendant's Lands, tho' the Plaintiff can have only a Moiety in Execution. *R.* 2 *Cro.* 513.

So, if the King's Leſſee is outlawed, he forfeits his Leaſe. *R. Mo.* 237.

So a Man outlawed forfeits Stock in the *Eaſt-India* Company, *&c.* 2 *Lev.* 49. 2 *Ver.* 313.

So upon a *Levari facias* after an Inquiſition upon an Outlawry, a Stranger's Cattle, *Levant* and *Couchant* upon his Land, may be ſeiſed and ſold; for they are the Iſſues or Profits of the Land. *R. Skin.* 618. *Vide Poſt*, (D. 4.)

So a Bond to *A.* who was Truſtee for *B.* will be forfeited by the Outlawry of *B.* *R.* 2 *Rol.* 807. *l.* 15. 2 *Cro.* 512, 513.

If a Man recovers Damages in a perſonal Action, and afterwards is outlawed, the King ſhall have the Damages and Execution for them upon the Judgment. *R.* 2 *Rol.* 807. *l.* 2.

If the Conuſee of a Statute ſues an Extent, and has the Conuſor in Execution, and afterwards is outlawed, the Debt is forfeited, and the King may diſcharge the Conuſor; for his Body is not a Satisfaction. *R.* 2 *Rol.* 807. *l.* 5.

So, if *A.* has Judgment againſt *B.* who holds jointly with *C.* who alien, and afterwards *A.* is outlawed, the King ſhall have an Extent for the Moiety of *B.* tho' the Alienation was before the Outlawry. *R. Lane* 20.

So, if a Statute is acknowledged to two, and one ſues Execution, and afterwards is outlawed, it will be a Forfeiture of the Debt againſt both. *R.* 2 *Rol.* 808. *l.* 30.

So, if a Bond be made to two, one of whom is outlawed, the whole Bond will be forfeited. *Semb.* 1 *Rol.* 7.

(D. 3.) What not.

But by Outlawry in perſonal Actions a Man does not forfeit any Lands, of which he has an Eſtate of Freehold. 2 *Rol.* 807. *l.* 30.

Nor a Rent-Charge for Life, nor Arrears which accrue for the Rent during his Life. *Hut.* 54.

[Copyhold Lands are not liable to be ſeized; and if they are and a *Venditioni exponas* iſſued, it ſhall be quaſhed. *Rex* v. *Budd*, *T.* 31 *G.* 2. *Parker* 190.]

If

If *A.* ſeiſed in Fee leaſes for Years and is outlawed, the King ſhall not have the Profits during the Term. *Bro. Patent* 3.

So he does not forfeit Debts due to him upon Contract. 2 *Rol.* 806. *l.* 52.

Or other *Choſe en Action.* *Semb. Sav.* 40.

Nor the Equity of Redemption of a Term. *Semb.* 2 *Ver.* 314.

Nor Money due to him upon Mortgage. *Hut.* 53.

So he does not forfeit a Thing, of which the Intereſt was not veſted in him: As, if Leſſee at Will ſows his Land, and the Leſſor is outlawed, the King ſhall not have the Emblements. 2 *Rol.* 807. *l.* 35.

If a *Feme Covert* poſſeſſed of a Term for Years be waived, the King ſhall not have the Term. 2 *Rol.* 806. *l.* 45.

If an Executor is outlawed, he does not forfeit the Goods, which he has of the Teſtator's. 2 *Rol.* 806. *l.* 47.

Nor the Goods, which he himſelf recovered as Executor. 2 *Rol.* 806. *l.* 35.

Nor the Cattle of a Stranger *Levant and Couchant* upon his Land. *R. Skin.* 617. *cont.* *Vide ante*, (D. 2.)—*Poſt*, (D. 5.)

So a Leaſe by the King to a Man outlawed will be good; for he has a Capacity to be a Farmer to the King. *R. Mo.* 237.

(D. 4.) To whom the Forfeiture ſhall be.

If a Man is outlawed, the Forfeiture ſhall be to the King.

Tho' he is outlawed in a perſonal Action.

So, if the Leſſor of Lands within a County *Palatine* is outlawed, tho' the *Count Palatine* has the Goods of the Outlaw within his Precinct; yet the King ſhall have the Arrears of Rent: For it follows the Perſon. *Dub.* 2 *Rol.* 808. *l.* 40. *Lane* 90.

Yet the Outlawry in a perſonal Action ſhall be for the Benefit of the Party, if he pleaſes: And therefore if the Defendant is taken upon a *Capias Utlagatum* after Judgment, upon Prayer he ſhall be in Execution for the Party. *Ca. Parl.* 73. *Vide Execution*, (B. 2.)

So the King may grant the Benefit of an Outlawry to another. *R.* 2 *Rol.* 188. *l.* 5.

(D. 5.) How Advantage ſhall be taken of it.

So upon the Outlawry, a general *Capias* lies againſt the Perſon outlawed.

Or a ſpecial *Capias Utlagatum*, by which the Sheriff is commanded *Quod per Sacramentum, &c. inquirat quæ Bona aut Catalla, Terras aut Tenementa habuit Die Utlagar' et ea extendi et appreciari fac', &c.* *Off. Br.* 35.

And thereupon the Sheriff returns an Inquiſition taken by him. *Lut.* 330.

[If a Man is outlawed in a Civil Action, and Extent, Inquiſition, and *Levari facias*, and 50 *l.* levied thereon, it may not be paid to Plaintiff on Motion tho' Defendant conſent, if Nobody conſents for the Crown; for it belongs to the King if a Leaſe is not taken out. *Rex* v. *Fowler, in Sc. H.* 1718. *Bunb.* 38.]

If the Land be under-valued, there may be a *Melius Inquirendum.* *Hard.* 506.

And ſuch Inquiſition muſt be as certain as an Indictment or Declaration. *Semb. Hard.* 58.

And therefore, if it finds ſeveral Parcels of Land, without ſaying of what Nature, it will be bad; tho' it mentions the Value and Tenants Names. *R. Hard.* 59.

But it is ſufficient, if it ſhews the Value of the Lands *in Toto*, tho' it does not ſhew the Value of every particular Parcel. *R. Hard.* 7.

So, if it finds two Marſhes of ſuch a Value in the Poſſeſſion of *B.* tho' it does not ſay how many Acres. *R. Hard.* 59.

Or

Or a Close called *D.* tho' it does not mention Quantity or Quality. *Hard.* 76.

So *de 6 Clausis Terræ et Pastur' de Messuagio sive Tenemento, &c.* are sufficient; for being only an Office for Information, so much Certainty is not necessary as in an Office to intitle. *R. Hard.* 191.

So the Return may be good in Part and quashed for Part. *R. Hard.* 59.

So, if there be a Variance in the Outlawry returned to the *Exchequer* from the Record in *C. B.* it may be amended. *R. Hard.* 7.

So an Information lies in the *Exchequer*, in the Nature of Trover, against him who has Goods of the Outlaw, and does not deliver them. *R. Per Hale*, 1 *Mod.* 90.

So after the Inquisition returned in *C. B.* a Transcript thereof shall be transmitted to the *Exchequer*, and thereupon a *Scire facias* goes against him who has Goods of the Outlaw in his Hands. *Lut.* 331.

So by Bill by the *Attorney-General* in the *Exchequer* a Discovery of his real and personal Estate and the Grants made of it may be required; for the Outlawry is in the Nature of a Judgment for the King. *R. upon Demurrer, Hard.* 22.

So a common Person may demand a Discovery against an Outlaw by Bill, to enable him to take out Execution. *Hard.* 22.

So, where a Man is outlawed in a personal Action, the King may take the Profits of his Freehold: As, the Rent, Corn, Grass, *&c.* 2 *Rol.* 808. *l.* 5.

And may grant to another to levy the Profits in his Name. 2 *Rol.* 808. *l.* 22.

So he may make a Lease to the outlawed Person himself; for he is capable as a Farmer. *R. Mo.* 237. *Vide infra.*

[On an Inquisition on an Outlawry, a Term for Years cannot be sold by the Sheriff; for the Profits only are forfeited to the King. *Semb. Rex* v. *Blunt*, *P.* 1722. *Bunb.* 104.]

So the Cattle of a Stranger *Levant and Couchant* upon the Land shall be taken as the Issues of the Land. *R.* 1 *Sal.* 395. 5 *Mod.* 117.

So the Cattle of a Commoner or Tenant in Common, if his Title is not found by the Inquisition. 1 *Sal.* 395.

So, it is the usual Course of the *Exchequer*, to grant a Lease of the Lands of the Outlaw to the Party, who sues the Outlawry. *Ca. Parl.* 72. *Hard.* 106. *R. Mo.* 237.

[If, Defendant being outlawed, Plaintiff gets a Lease from the Crown, and is obstructed, he cannot have an Injunction to put him in Possession, but he may bring Trespass for the Profits—or have an Ejectment. *Sed Q. de ceo. Tiffin* v. *Jackson*, *H.* 1728. *Bunb.* 261.]

[The King under an Outlawry or his Lessee may redeem a Mortgage. *Attorney-general* v. *Basnett*, *M.* 12 *W.* 3. *Parker* 268.]

And the Lessee may take the Profits to the Value extended, but not the other Profits, if they are of greater Value, before a *Melius Inquirendum*, which finds the full Value. *R. Hard.* 106.

So the Party, at whose Suit he was outlawed, may obtain a Grant of the Lands by Privy Seal.

If the Lands of the Outlaw are seised, and the Inquisition returned, the Outlaw by his Feoffment or Sale afterwards cannot defeat the King, *&c.* of the Profits. *R.* 1 *Lev.* 34.

So they cannot be afterwards extended by *Elegit* upon a Judgment before the Outlawry. *R. Ca. Parl.* 75. *R. Hard.* 106. *R.* if there be no *Covin. Sal.* 495.

So the Heir or Feoffee of the Defendant shall be bound by the Outlawry. 1 *Sal.* 395.

But the King has not the Possession of Freehold Land; for he cannot grant or lease generally. 2 *Rol.* 808. *l.* 20, 15.

Neither can he plow the Land to sow. 2 *Rol.* 808. *l.* 7.

Nor ſeiſe the Land; for then upon Pardon or Reverſal of the Outlawry, he would be put to ſue *Livery*. 2 *Rol.* 808. *l.* 12.

Neither can he cut Trees or Underwood. 2 *Rol.* 808. *l.* 10.

And a Man outlawed may make a Feoffment, whereby the King is deprived of the ſubſequent Profits. 2 *Rol.* 808. *l.* 17.

But this is intended of a Feoffment before *Seiſure* for the King. 1 *Lev.* 34. 1 *Sal.* 395.

So, if he levies a Fine before Seiſure, the Eſtate paſſes. *R.* 1 *Lev.* 33. *Ray.* 17.

Or makes a Bargain and Sale. *Semb.* 1 *Lev.* 33.

So, before Seiſure, Execution may be upon the Land by *Elegit*. *Semb.* 1 *Lev.* 33. *R. Hard.* 75.

So if, before the Inquiſition returned, he makes a Leaſe *bonâ Fide* for a valuable Conſideration. *R. Hard.* 101.

And an Aſſignment by ſuch Leſſee after the Inquiſition returned will be good. *R. Hard.* 422.

So a Stranger having Title before Seiſure, may enter and maintain an Ejectment. *R. Hard.* 176.

So, by a Feoffment after Seiſure, the Eſtate paſſes to the Feoffee, tho' the King ſhall have the Profits during the Outlawry. 1 *Sal.* 395.

So the Leſſee of Lands ſeiſed by Outlawry, ſhall account for the Profits (which he might have received without his Default) to another Creditor of the Outlaw, who has an Intereſt in the Land. *Hard.* 106.

Perſonal Chattels are forfeited and veſted in the King by the Outlawry before Inquiſition found. *R.* 1 *Sal.* 395. *Vide Forfeiture*, (B. 4, 6.)

But Chattels Real, and the Profits of Land are not forfeited, till Inquiſition found. 1 *Sal.* 395.

[Where there are two Outlawries at different Times, the firſt Inquiſition ſhall prevail. *Bradnel's Caſe*, *M.* 36 *C.* 2.]

[Where there are two Outlawries on one Day, the firſt Inquiſition ſhall be preferred. *Pain* v. *Dews*, *P.* 21 *C.* 2.]

[Where there are two Inquiſitions on one Day the firſt Outlawry ſhall be preferred.]

[Where there are two Outlawries on one Day, and both Inquiſitions on one Day, the firſt Leaſe ſhall be preferred. *Rex* v. *Willes*, *M.* 22 *G.* 2. *Parker* 85.]

Utlagatum Capias.

Vide Pleader, (2 W. 6.)

WAGER OF LAW.

Vide Pleader, (2 W. 45.—2 X. 4.)

WAGES.

—— of Mariners, &c.

Vide Admiralty, (E. 15.)

—— of Servants, &c.

Vide Juſtices of Peace, (B. 51, 60.)

W A I F E.

(A) Waife.

(A. 1.) What ſhall be.

IF a Man ſteals Goods, and being purſued, for Fear of being apprehended, waives the Goods out of his Poſſeſſion, thoſe Goods are ſaid to be Waife. 5 *Co.* 109. *a.*

So, if he thinks he is purſued, and having the Goods in his Poſſeſſion flies, and waives the Goods. 5 *Co.* 109. *a.*

Or, if to eaſe him in Flight he waives them. *Stamf. Pl. Com.* 186.

Tho' the Thief leaves the Goods at a Common Inn. *R.* 2 *Rol.* 809. *l.* 15.

(A. 2.) What not.

But, if a Thief ſteals Goods, and conceals them in the Ground, or other ſecret Place, and afterwards flies, they are not forfeited as Waife. *R.* 5 *Co.* 109. *a.* *Mo.* 572. *Cro. El.* 693.

Or, if he throws them into the Houſe or Manor of another, and there leaves them and flies. 5 *Co.* 109. *a.*

Or if a Man takes Goods as a Treſpaſſer and waives them. *Stamf. Pl. C.* 186. *b.*

Or, if he flies for Fear of being apprehended, when he has not the Goods in his Poſſeſſion. 5 *Co.* 109. *a.*

So, if a Man is robbed, who had a ſafe Conduct, *tam in Bonis quam in Corpore*, and the Thief upon Purſuit waives them, thoſe Goods are not Waifes. *Stamf. Pl. C.* 186. *b.*

So, if a Thief leaves a Horſe, ſtolen, at a common Inn for his Meat, it is no Waife. *R.* 2 *Rol.* 809. *l.* 10.

So the Goods of an *Alien* cannot become Waifes. *Pal.* 14.

All Goods waived are forfeited to the King, and he ſhall keep them as his own. *Stamf. Pl. C.* 186. for the Owner loſes his Property, becauſe he did not freſhly purſue the Felon. 5 *Co.* 109. *a.*

And the King's Bailiff, or another, in the King's Right, may ſeiſe them. *St. P. C.* 186. *a.*

But before Seiſure by the King or his Patentee, the Owner of the Goods may take them, tho' it be twenty Years after the Stealing. *St. Pl. C.* 186. *b.*

So after Seiſure, if he makes freſh Suit, and attaints the Felon for ſuch Felony. *Ibid.*

And by the Common Law, this was only, when the Felon was attaint in an Appeal at the Party's Suit. 5 *Co.* 109.

But now by the *St.* 21 *H.* 8. 11. If the Felon be indicted and attaint by Evidence given by the Party, he ſhall have Reſtitution of his Goods. 5 *Co.* 111. *a.*

So, if the Lord ſeiſes Goods as Waife, he will not be excuſed for Miſuſer; if there be freſh Suit. *R.* 2 *Leo.* 192.

(B) Bona Fugitivorum et in Exigend' poſitorum.

BONA Fugitivorum are the Goods of him, who is found upon Record to have fled for Felony; for upon the Preſumption of his Guilt he forfeits all his Goods, which he had at the Time of his Flight to the King. 5 *Co.* 109. *a.* *St. Pl. C.* 183. *b.*

If

If the Jury, who find the Flight, acquit him of the Felony. *St. Pl. C.* 183. *b.* 5 *Co.* 109. *b.*

[Flight, on a Charge of Felony, induceth Forfeiture of Goods, becauſe he hath done what in him lay to ſtop the Courſe of publick Juſtice; not on a legal Preſumption of Guilt, which muſt be at an End on Acquittal. *Foſter* 272.]

So, if it be found by Inqueſt before the Coroner, that he fled, tho' the Jury, who try him, acquit him of the Felony and alſo of the Flight; for the King may hold to the Record, which makes moſt for his Advantage. *St. Pl. C.* 183. *b.* 5 *Co.* 109. *b.*

And ſuch Finding is not traverſable. *St. Pl. C.* 183. *b.*

So, if it be found by Verdict that an Acceſſary before, or after, fled. *St. Pl. C.* 184. *a.*

Or by Inqueſt before the Coroner, that an Acceſſary before fled. *Ibid.*

So, if the flying was only for *Petit Larceny*. *Ibid.*

So a Man forfeits his Goods by the Flight found, tho' he has a Pardon of the Felony. *Ibid.*

Tho' the Flight was before or after Arreſt. *Ibid.*

Or he was killed in his Flight, ſo that he cannot be acquitted or attainted. *St. Pl. C.* 184. *a.* 5 *Co.* 109. *b.*

So, if a Man accuſed of Felony does not appear, but Proceſs goes till an *Exigent* is awarded againſt him, he forfeits his Goods, tho' he be afterwards acquitted; for it is *tantamount* to a Flight. *St. Pl. C.* 184. *b.* 5 *Co.* 110. *b.*

Tho' there be a Fault in the Writ or Count, for which the Writ abates. *St. Pl. C.* 184. *b.*

Or he was impriſoned after *Exigent*, by which the Outlawry upon it is reverſed. *St. Pl. C.* 184, 5.

But a Man does not forfeit Goods by Flight found, if he is not afterwards indicted, if he is afterwards alive. *St. Pl. C.* 184.

Nor, if the Flight is found before the Coroner, when he has no Juriſdiction: As, if he finds the Flight of an Acceſſary after the Fact. *St. Pl. C.* 184. *a.*

So he does not forfeit by Award of an *Exigent*, if the *Exigent* be reverſable. *St. Pl. C.* 184. *b.* 5 *Co.* 111. *a.*

(C) Bona Felonum.

BONA Felonum are the Goods of any one convicted of Felony; for he forfeits to the King all his Goods and Chattels, which he had at the Time of the Conviction. 5 *Co.* 110. *a.*

So a Clerk convict forfeits all the Goods which he had at the Time of Conviction, or after, till Purgation or Pardon. *St. Pl. C.* 185. 5 *Co.* 110. *a.*

So now, when by *St.* 18 *El.* 7. After Clergy allowed he ſhall be burnt in the Hand and immediately delivered, he forfeits the Goods which he had at the Time of Conviction, tho' not ſuch as he had after. *R.* 5 *Co.* 110.

So, if a Man be *Felo de ſe*, he forfeits all the Goods, which he had at his Death, if he is found *Felo de ſe*, by Inqueſt before the Coroner, or by Preſentment before Juſtices, who have Conuſance of Felony. *R.* 5 *Co.* 110. *b.*

By Grant of the Goods *Fugitivor' et Felon'*, the Grantee ſhall have the Debts and Specialties of Fugitives, *&c.* as well as other Goods, tho' there are no ſpecial Words. 2 *Rol.* 195. *l.* 20. *Dub.* 2 *Leo.* 56.

And it ſhall be a Debt where the Specialty was, not where payable. *R.* 2 *Leo.* 56.

The Goods of Fugitives or Felons can only be claimed by the King, or by his Grant. 5 *Co.* 109, 110.

And not by Preſcription; for they are not forfeited, till found upon Record. 5 *Co.* 110.

Yet a County *Palatine*, which has *Jura Regalia*, may alſo claim *Bona Felon'* by Preſcription. *R.* 1 *Rol.* 399.

If the King grants to *B. Bona Felonum qualitercunque damnator'* of his Tenants, he ſhall have the Goods, if the Tenant be attainted of Petty Treaſon, as well as other Felony. 2 *Rol.* 194. *l.* 53.

But the Grantee ſhall not have the Goods of thoſe attainted of High Treaſon. 2 *Rol.* 194. *l.* 50.

(D) Bona Confiſcata.

SO, if the Owner omits any Part of the Goods, ſtolen, in his Appeal, they are forfeited to the King in reſpect of the Connivance. 5 *Co.* 110. *a.*

So, if he brings a malicious Appeal: As, for his Goods which the Appellee had by his Bailment or by Finding. 5 *Co.* 110. *a.*

So, if a Man is indicted for ſtealing Goods, which were his own Goods, and he diſclaims them, they are forfeited to the King; for *capit Fiſcus. St. Pl. C.* 186. *a.*

Or, if a Felon diſavows the Goods taken in his Poſſeſſion, and afterwards he is attainted for other Goods. *Ibid.*

(E) Deodand.

(E. 1.) What ſhall be.

OMNIA quæ movent ad Mortem ſunt Deodanda. Dy. 77. *b.* 5 *Co.* 110. *b.* And therefore every Beaſt, or Thing moveable inanimate, which occaſions the Death of a Man within the Body of a County, without the Default of himſelf or another, ſhall be forfeited to the King as a *Deodand*, to be employed *in Eleemoſynam.* 3 *Inſt.* 57.

Tho' the Thing was not in Motion at the Time, if it be moveable. *St. Pl. C.* 20.

And as well, where the Man by Miſadventure falls upon the Thing, as where the Thing falls upon him. *Ibid.*

And therefore, if the Sword of *B.* is uſed by *A.* and another is killed with it, it will be a *Deodand.* 3 *Inſt.* 57. *H.* 33.

If a Man falls from a Ship into freſh Water, and is killed, the Ship will be a *Deodand. H.* 33.

If he falls from a Horſe when he plunges in the Water. *Semb.* 2 *Rol.* 23.

If an Animal kills a Child under fourteen, *viz.* Age of Diſcretion, yet it ſhall be a *Deodand.* 3 *Inſt.* 57. *H.* 33. *Per* 2 *J. Semb. Ray.* 208.

And all Things moving with the Thing, which occaſioned his Death, are *Deodand. St. Pl. C.* 20. *b.*

So, if a Man riding upon a Carriage, falls from it, and the Horſes draw the Carriage upon him, by which he dies, the Horſes and Carriage are *Deodand. St. Pl. C.* 20.

So, if the Carriage be loaden with Hay, the Hay and the Carriage are *Deodand. St. Pl. C.* 20. *b.*

So tho' he falls from the Carriage by the Motion only of one Horſe. *St. Pl. C.* 20. *a.*

So, if a Man is thrown from a Carriage, by overturning, under the Wheel of a Waggon next to it, and the Waggon, being loaden, goes over him and kills him, the Carriage, Waggon, Loading and Horſes are *Deodands. R.* 1 *Sal.* 220.

So, if a Horſe throws a Man into the Water, and the Wheel of a Mill kills him, the Horſe and Wheel are *Deodands.* 1 *Sal.* 220. *Vide Poſt*, (E. 2.)

If one Tree falls upon another, which cauſes the Death of a Man, both Trees are *Deodands.* 1 *Sal.* 220.

[But *Deodands* do not meet with Countenance in *Weſtminſter-hall*; when a Jury has found too little, the Courts will not interpoſe in Favour of the Crown, or

Lord of the Franchiſe; (tho' they will, if it has found too much, in Favour of the Subject.) *Foſter* 266.]

[Thus if *A.* ſitting on his Waggon falls, the Horſes draw on the Waggon, the Fore-wheel cruſhes his Head and he dies, and the Coroner's Jury find the Wheel only is the Deodand, the Court will not quaſh the Inquiſition. *Rex* v. *Rolfe, Coroner of Kent, M. & H.* 5 *G.* 2. *Rex* v. *Drew, Coroner of Middleſex, M.* 29 *G.* 2. *Foſter* 266, 267.]

[No Man can preſcribe to it; it muſt be by the King's Grant. *Foſter* 266.]

(E. 2.) What not.

But a Thing, which does not move with that which is the Cauſe of the Death, is not a *Deodand*, tho' it is joined to it: As, if a Man falls from the Wheel of a Carriage and is killed, but the Carriage does not move, the Wheel only ſhall be forfeited. *St. Pl. C.* 20.

If a Man falls into the Water, and is carried by the Water under a Mill, and there preſſed to Death by the Wheel of the Mill, the Wheel only ſhall be forfeited. *St. Pl. C.* 20. *b.* *Vide infra.*

If a Man falls from his Horſe upon a Trunk, and breaks his Head upon it, by which he dies, the Horſe only ſhall be forfeited. *St. Pl. C.* 20. *b.*

If he is thrown by the Motion of the Horſes from a Cart laden with Litter, the Cart and Horſes are *Deodand*, not the Litter. *Ibid.*

If thrown from a Horſe by the Violence of the Water into the River, the Horſe is not a *Deodand*. *R.* 2 *Cro.* 483. *Acc.* 2 *Rol.* 23. *Pop.* 136.

So a Thing fixed to the Freehold ſhall not be a *Deodand:* As, a Door, or Gate of a Houſe forced by the Wind againſt a Man, whereby he is killed. *Per* 2 *J.* 1 *Sid.* 307.

Nor a Bell fixed to a Church. *Semb.* 1 *Sid.* 207. *Mod. Ca.* 187. 1 *Lev.* 136.

Nor a Sail of a Windmill. 1 *Sid.* 207.

Nor a Mill-Stone or Wheel of a Mill. *R. Mod. Ca.* 187. *D. Ray.* 97.

Nor a Tree not ſevered, but blown by the Wind againſt another. 1 *Sid.* 207.

Nor a Thing conſecrated before: As, a Bell, which falls upon a Ringer. *Cont. St. Pl. C.* 20. *Semb. Acc.* 1 *Sid.* 207. 1 *Lev.* 136. *Ray.* 97. *Cont. Dy.* 77. *in Marg.*

Nor a Ship in the Sea, or Salt Water. *St. Pl. C.* 21. *a.* 3 *Inſt.* 57. *H.* 33.

So, if a Child within the Age of Diſcretion, (*viz.* under fourteen) falls upon a Thing moveable and is killed, it ſhall not be a *Deodand*. 3 *Inſt.* 57.

Or falls from a Cart, Ship, Horſe, *&c.* *H.* 33.

A *Deodand* ſhall be forfeited to the King, or to him who claims by the King's Patent. *Dy.* 77. *a.* 107. *b.*

And by Inquiſition before the Coroner it muſt be found, that it is *Deodand* and the Value. *St. Pl. C.* 21. *a.* *H.* 34. *Greenwood* 22.

(F) Eſtray.

IF any Man's Cattle ſtray into the King's Manor:

So, if they ſtray into the Manor of any other Lord, who has Title to *Eſtrays* by Preſcription, or Grant, and continue there for a Year and a Day (being proclaimed at the next Markets and Churches) without Challenge, the Property is veſted in the Lord. *Britt. Ca.* 17. *Bend. pl.* 27.

A Swan may be an Eſtray. 1 *Rol.* 878. *l.* 30. 7. *Co.* 17.

So, if Cattle ſtray into the Manor of *A.* and within the Year ſtray to the Manor of *B.* and continue there for a Year and a Day, and are proclaimed, *B.* ſhall have them as *Eſtrays*. 1 *Rol.* 878. *l.* 40.

So, if the firſt Manor was the King's Manor. *Q.* 1 *Rol.* 878. *l.* 40.

So, if *A.* leaſes his Manor, in which an *Eſtray* was, before the Year expired, and then the Year and Day expire, the Leſſee ſhall have it, and not the Leſſor; for

for he had the Cuſtody only during the Year, and the Property veſts in him who has the Cuſtody at the End of the Year and Day. *R.* 12 *Co.* 101.

So, if a Stranger within the Year takes the Cattle and puts them into the Manor again, as his own, and they continue there for a Year and a Day, they will be an *Eſtray*. *Semb.* 1 *Rol.* 879. *l.* 3.

But if it does not continue in the Manor for a Year and a Day, without Challenge, it will not be an *Eſtray*: As, if the Lord puts it into a Place out of the Manor. *R. Pal.* 486.

Tho' it continues for three Quarters of a Year, and then continues in another Manor or Land, to which it ſtrayed, for the Reſidue of the Time.

And the Lord cannot retake it, if it ſtrays into another's Land before the Year expires; for no Property is veſted in him, till after a Year and Day. *Bro. Eſtray* 11. *Cont.* 12 *Co.* 101. *R.* that he may, if the other does not ſeiſe it as an *Eſtray*. *Hut.* 67.

So, if the Lord, or his Bailiff, does not ſeiſe it as an *Eſtray*, it ſhall not be ſo; for That begins the Property, and the Lord may chaſe it out of his Land, if he pleaſes. *R. Hut.* 67.

So Cattle which come for Common cannot be *Eſtrays*, tho' they continue there above a Year and Day. *Bro. Eſtray* 13.

Nor the King's Cattle, which come into the Manor of another for a Year and Day. 1 *Rol.* 878. *l.* 35.

So, it will not be an *Eſtray* by the Common Law, tho' it continues for a Year and Day; if it be not proclaimed at the two next Markets at leaſt upon Market Days. *Bro. Eſtray* 3, 4, 5, 10.

And at two Markets within the ſame County. *Semb.* 1 *Rol.* 878. *l.* 47.

And alſo at two Pariſh Churches. *Semb. Cro. El.* 716.

So, if the Lord uſes Cattle taken as an *Eſtray* by Riding, Work, &c. he will be a Treſpaſſer *ab Initio*. *R.* 2 *Cro.* 147. *Yel.* 96. 1 *Rol.* 879. *l.* 15. 12 *Co.* 101.

So a Cuſtom, alledged, to put Cattle taken as an *Eſtray* into a Moor, Part of the Manor, and there fetter them, if they are unruly, is not good. *R.* 1 *Rol.* 879. *l.* 25.

But uſing an *Eſtray* for Neceſſity is juſtifiable: As, to milk a Cow. *R.* 1 *Rol.* 879. *l.* 20. 2 *Cro.* 148. 12 *Co.* 101.

To put Fetters upon a Colt, which cannot be otherwiſe kept within the Fences. *Per Tanf.* 1 *Rol* 879. *l.* 30. *Hut.* 67. *Winch* 68, 124.

So he may put it in his Stable. *Hut.* 67.

So, if the Owner challenges the Cattle, ſeiſed and proclaimed as an *Eſtray*, within the Year; the Lord may detain them till reaſonable Amends are tendered for his Paſture. *R.* 1 *Rol.* 879. *l.* 35. *Bro. Eſtray* 1. 12 *Co.* 101. *Hut.* 67.

And the Detainer is juſtifiable, if he does not tender reaſonable Amends, tho' the Lord demands what is unreaſonable. 1 *Rol.* 879. *l.* 40.

Yet the Owner may take upon an Offer of Amends, tho' he does not tender a certain Sum. *R. Sal.* 686.

If the Lord dies before the Year expires, and afterwards the *Eſtray* continues in the Manor for the Year and Day; yet the Executor of the Lord ſhall have it, and not the Heir: For, when the Year is expired, the Property relates to the Seiſure. *Mo.* 11.

After Seiſure, the Lord ſhall be charged for Treſpaſs done by an *Eſtray*. *Hut.* 67.

And he ſhall have a Replevin, if a Stranger takes it. *Ibid.*

Or Treſpaſs. *Winch* 68.

(G) Treaſure-trove.

Treaſure-trove is when a Man finds Coin or Plate, of Gold or Silver, the Owner whereof is not known, then it belongs to the King. *St. Pl. C.* 39. 5 *Co.* 108. *b.* 3 *Inſt.* 132.

If

If it is found in the Ground, a Wall, or other Place. 3 *Inſt.* 132.

So, it may belong to another by Preſcription, or the King's Grant. *Ibid.*

But, it is not ſaid to be *Treaſure-trove*, if it be other Metal than Gold or Silver. *Ibid.*

Or, if it be found upon the Land, and not under Ground, in a Wall, &c. *St. Pl. C.* 39.

Nor, if the Owner can be known. *Ibid.*

Tho' the Owner be dead; for his Executor or Adminiſtrator ſhall have it. *St. Pl. C.* 39. *b.*

He, who finds Treaſure ought to give Notice thereof immediately to the King's Bailiff, &c. or Coroner. *St. Pl. C.* 40. *a.*

And the Coroner may inquire of the Treaſure found, and by whom. *St. Pl. C.* 40. *a.* 49, 50. *b.*

(H) Mines.

(H. 1.) Of Gold or Silver.

BY the Common Law all Mines of Gold or Silver within the Realm belong to the King, whether they are within the Lands of the King, or of a Subject. *R. Pl. Com.* 313, 336.

Tho' they are not mentioned in the *St.* 17 *Ed.* 2. *de Prerogativa Regis*; for there are ſeveral of the King's Prerogatives not mentioned there. *Pl. Com.* 322. *a.*

So, all Mines of Copper, Tin, Lead, Iron, or other baſe Metal, in which *aliquid Auri aut Argenti habet'*, for ſuch are Royal Mines. *R. Per* 9 *J.* 3. *cont.* If the Gold or Silver does not exceed the baſe Metal in Value. *Pl. Com.* 336. *b. And the Reporter makes a Quære*, if the Gold or Silver are not of greater Value, otherwiſe the King will have all Mines. *Pl. Com.* 340. *a.*

So Liberty of Digging and Carrying away the Oar, and all neceſſary Incidents, belong to the King. *Pl. Com.* 336.

And tho' the King grants Lands, in which Mines are, and all Mines in them; yet Royal Mines do not paſs. *R. Pl. Com.* 336. *b.*

[In a Grant of Lands from the Crown, if there is a bare Reſervation of Royal Mines without Right of Entry, the Crown cannot grant Licence to another to ſearch for ſuch Mines; but if they are once opened, it can reſtrain the Grantee from working them, and work them itſelf, or grant Licence to another ſo to do. *Lyddal* v. *Weſton*, *M.* 1739. 2 *Atkyns* 19.]

But the King by apt Words may grant Mines of Gold or Silver, or other Metals mixt with Gold and Silver, to a Subject, and ſever them from the Crown. *R. Pl. Com.* 336. *b.*

As, if *Ex certa Scientia*, &c. he grants to a Stranger all Mines, which he has in the Land of *B.* for the Words cannot be ſatisfied but by Royal Mines there. *Per Dyer Pl. Com.* 337. *a.*

And now by the *St.* 1 *W. & M. Seſſ.* 1. *ch.* 30. *S.* 4. No Mine of Copper, Tin, Iron, or Lead, ſhall be taken to be a Royal Mine, tho' Gold or Silver may be extracted out of the ſame.

And by the *St.* 5 & 6 *W. & M.* 6. The Owner of any Mine, wherein is Copper, Tin, Iron, or Lead, may work the ſame, tho' claimed to be a Mine Royal; Provided the King or any claiming under him, paying in thirty Days after Ore laid on the Banks, for all clean and merchantable Ore of Copper, 16 *l. per* Ton, of Lead, 9 *l. per* Ton, of Tin and Iron, 40 *s. per* Ton, may have ſuch Ore: Except Tin Ore in the Counties of *Devon* and *Cornwall*.

(H. 2.) The Stanneries.

So the Mines of Tin in *Cornwall* are the Revenue of the *Prince*, as Duke of *Cornwall*. 2 *Rol.* 171. K.

Vide in Courts, (L. 1, &c.)

WAIVER.

Vide Baron and Feme, (R—S. 4, &c.—T.)—*Pleader*, (R. 15.)

WALES.

(A) Wales.

(A. 1.) Part of the Dominions of *England*.

WALES was always Feudatory to the Kingdom of *England*. 2 *Inſt*. 195. 4 *Inſt*. 239.

Held of the Crown, but not Parcel. *Per Cook*, 1 *Rol*. 247. 2 *Rol*. 29.

And therefore the Kings of *Wales* did Homage and ſwore Fealty to *H*. 2. and *King John*. *Brad. Hiſt*. 299, 330, 480.

So to *H*. 3. *Brad*. 663.

And 11 *Ed*. 1. Upon the Conqueſt of *Leuellin* Prince or King of *Wales*, that Principality became a Part of the Dominion of the Realm of *England*. 2 *Inſt*. 195. 4 *Inſt*. 239.

And by the *St. Walliæ* 12 *Ed*. 1. It was annexed and united to the Crown of *England*, *tanquam Partem Corporis ejuſdem*. 4 *Inſt*. 240. 1 *Vau*. 300, 400. 2 *Rol*. 29. 2 *Mod. Ca*. 140.

And by the *St*. 27 *H*. 8. 26. Reciting that it was always incorporated and united, it is enacted, That the Dominion of *Wales* ſhall continue for ever incorporated, united, and annexed to the Realm of *England*.

Yet, if the Statute *Walliæ*, made at *Rutland* 12 *Ed*. 1. was not an Act of Parliament, (as it ſeems that it was not) the Incorporation made thereby was only an Union *Jure Feudali, & non Jure Proprietat'*. *Vau*. 414.

(A. 2.) Subject to its Laws.

Wales before the Union with *England* was governed by it's own proper Laws. *Vau*. 300, 399. *Cro. Car*. 247. *Jon*. 255.

But by the *St. of Rutland* 12 *Ed*. 1. The King ſays *Leges et Conſuetudines Partium illarum fecimus recitari, quibus intellect' quaſdam de Concilio Procerum delevimus, quaſdam permiſimus, quaſdam correximus, et alias adjiciend' decrevimus*. *Vau*. 400.

And, ſince, Laws made in *England* bind People in *Wales* (as in *Ireland*) if it be named, but not otherwiſe. *Vau*. 300, 400, 415.

And now by the *St*. 27 *H*. 8. 26. All in *Wales* ſhall have and inherit all Liberties, Rights, Privileges and Laws, in this Realm, and all other his Majeſty's Dominions, as all other his Majeſty's natural-born Subjects.

And ſhall be inheritable to Manors, Lands, *&c*. in *Wales*, in the ſame Manner and after the Form of the *Engliſh* Laws, without Diviſion or Partition, and not after any Tenure or Form of *Welſh* Laws and Cuſtoms.

And that the Laws and Statutes of this Realm, and no other, ſhall be had, uſed and executed in the ſaid Dominion of *Wales*, in like Manner as in this Realm, or as by this Act ſhall be further eſtabliſhed.

And therefore the Statutes, then made or afterwards to be made, are all induced into *Wales*. *Vau*. 215.

(A. 3.) Shall have its proper Counties.

By the *St. W.* 12 *Ed.* 1. There were ſix Counties erected in *Wales*, *viz. Angleſea*, *Carvarvon*, *Merioneth*, *Flint*, *Carmarthen* and *Cardigan*. 4 *Inſt.* 239. But the *St.* 34 *H.* 8. 26. mentions *Glamorgan* and *Pembrook* alſo as ancient Counties.

The *Marches* of *Wales* were Lordſhips lying between the Counties of *England* and *Wales*, and not in any County. *Vau.* 415.

By the *St.* 27 *H.* 8. 26. and 34 *H.* 8. 26. *Wales* was divided into twelve Counties; for ſeveral *Lordſhips Marchers* were annexed to divers Shires in *England*, and ſeveral to Counties of *Wales*, (*viz.* to *Salop*, *Hereford*, and *Glouceſter* in *England*, and to *Glamorgan*, *Carmarthen*, *Pembroke*, *Cardigan*, and *Merioneth* in *Wales*) and the Reſidue were erected into five new Counties, *viz. Monmouth*, *Brecknock*, *Radnor*, *Montgomery*, and *Denbeigh*, of which *Monmouth* was annexed to the Realm of *England*, and the four others to the Dominion of *Wales*.

(B) What Proceſs goes to Wales out of the Courts of Weſtminſter.

(B. 1.) Mandatory Writs.

TO all the Dominions acquired to the Crown of *England* ſome of the King's Writs run: As, Mandatory Writs out of *Chancery*. *Vau.* 401.

Such as Writs of Safe-Conduct. *Ibid.*

Writs of Protection. *Ibid.*

Ne Exeat Regnum. *Vau.* 402.

De Leproſo amovenda. *Ibid.*

De apoſtatâ capienda. *Ibid.*

So a Writ of Error. *Ibid.*

So a *Certiorari* lies to the Juſtices of the *Grand Seſſions* in *Wales* to remove an Indictment for Felony to *B. R. R.* 2 *Cro.* 484. 1 *Rol.* 395. *l.* 5. *Dub. Cro. Car.* 331. 1 *Rol.* 395. *l.* 7. *Dub.* 1 *Mod.* 64, 68. *R.* 1 *Vent.* 93, 146. *R.* 2 *Rol.* 29. *R. Sal.* 146. *Semb.* 2 *Mod. Ca.* 136. *ad* 145. *Vide Poſt*, (D.)

So a *Habeas Corpus* to remove a Perſon indicted there. *R.* 2 *Mod. Ca.* 137.

(B. 2.) *Capias Utlagatum*.

So a *Capias Utlagatum* always goes directed to the Sheriffs of *Wales*; for it is in the Nature of a Mandatory Writ. *Vau.* 414, 397.

By the *St.* 1 *Ed.* 6. 10. All Writs of ſpecial *Capias Utlagatum*, ſingle *Capias Utlagatum*, *Non moleſtandum*, and all other Proceſs for or againſt any Perſon outlawed, may be directed to the Sheriff of any of the Counties in *Wales*.

(C) What Proceſs does not go thither.

BUT the Union of *Wales* to the Kingdom of *England* by the *St. Walliæ* 12 *Ed.* 1. or by the *St.* 27 *H.* 8. 26. does not ſubject *Wales*, to the Juriſdiction of the Courts of *England*. *Vau.* 400, 415.

And therefore, generally, *Breve Domini Regis non currit in Wallia*.

[*Breve Domini Regis* de latitat *non currit in Wallia*. Argued in *Lampley* v. *Thomas*, and adjudged in *Jones* v. *Jones*, *H.* 21 *G.* 2. 1 *Wilſ.* 193.]

An Original Writ in real Actions does not run in *Wales*. *Vau.* 417.

And tho' Real Actions for a Seigniory, Lands, Church, *&c.* in the *Marches of Wales*, were brought and tried in an adjoining County before the *St.* 27 *H.* 8. 26. Yet ſince that Statute they are not uſed. *Vau.* 417. *Vide Poſt*, (D.)

So

So an Appeal does not lie in the County next to *Wales* for a Murder committed in *Wales*. *R. Cro. Car.* 247.

So an Indictment in *Wales* for Felony in the ſame County ſhall not be removed by *Certiorari* to be tried in the County adjoining. *Dub. Cro. Car.* 248, 331, 2. *Semb.* 2 *Mod. Ca.* 137, 140. *Vide Ante*, (B. 1.)

So a Perſon indicted for Murder in *Wales* may be removed by *Habeas Corpus*, and tried in the next *Engliſh* County. *Vide Poſt*, (D.)

So judicial Proceſs, as a *Capias ad ſatisfaciendum*, or *Fieri facias*, upon a Judgment, does not go to a *Sheriff* of *Wales*. *R. in C. B. Godb.* 214. *R. cont. per* 3 *J.* 2 *Mod.* 10. *Acc. Vau.* 397, 417.

Tho' it be upon a Judgment in *B. R. R. cont. in B. R.* 2 *Bul.* 156, 7. *Per Dod.* 2 *Cro.* 484. *Semb. cont. per* 3 *J. but Twiſd. acc. and therefore Nothing done.* 2 *Sand.* 193. 1 *Lev.* 291.

Nor a *Scire facias* upon a Judgment againſt an Heir and *Tertenants*. *R. cont. per* 3 *J.* 2 *Mod.* 10. *but Vau. acc.* 397, 417.

Nor a *Scire facias* againſt Bail, who live in *Wales*. *R. cont. in B. R.* 2 *Bul.* 54.

Nor a *Teſtatum Scire facias*. *Dub.* 1 *Lev.* 291.

So, if the Defendant dies after Judgment againſt him in *Wales*, and *A.* takes Adminiſtration to him in *London*, the Judgment in *Wales* ſhall not be removed by *Certiorari* to *B. R.* or *C. B.* to enable the Plaintiff to take a *Scire facias* out of the Superior Court againſt the Adminiſtrator. *R. Cro. Car.* 34.

(D) Trials for Lands, &c. in Wales.

REAL Actions for a Seigniory or Barony within the *Marches of Wales* ſhall be brought and tried in the County within *England* next to ſuch Seigniory or Barony. *Vau.* 412. *Vide Action*, (N. 2.)

And this ſeems founded upon an ancient Statute now loſt. *Vau.* 404.

So by the *St.* 26 *H.* 8. 6. Juſtices of Peace and Gaol-Delivery in Counties adjoining to *Wales* may hear, *&c.* all Felonies (and their Acceſſaries) committed in *Wales*.

And this is not repealed by the *St.* 34 & 35 *H.* 8. 26. That Judges of *Wales* may hold Pleas of the Crown, and ſhall inquire, *&c.* of all criminal Offences committed within their Limits; for the King has a concurrent Juriſdiction. 2 *Mod. Ca.* 145.

And therefore a Perſon indicted there for Murder, after a *Nolle proſequi* upon the Indictment there, was removed by *Habeas Corpus* to *Hereford*, and there indicted, and tried and convicted, and, after Judgment againſt him in *B. R.* executed. *R.* 2 *Mod. Ca.* 136 *ad* 145.

[Judges of Aſſize in adjacent *Engliſh* County have concurrent Juriſdiction in Felonies, with the Grand Seſſions, thro' all *Wales*, and not in the Lordſhips Marchers only. *Rex* v. *Athoe*, *T.* 9 *G. Str.* 553.]

[*Habeas Corpus* may be granted, without Affidavit, to remove a Priſoner indicted, to take his Trial in the adjacent *Engliſh* County. *Rex* v. *Davis*, *H.* 6 *G.* 2. *Str.* 945.]

But Trial in the next County for Lands in *Wales* extends only to a Seigniory or Barony within the *Marches* there. *Vau.* 412.

It does not extend to an Indictment or Appeal for Murder or other Felony there, which ſhall be tried in the *Grand Seſſions*. *R. Jon.* 255.

After Iſſue joined a *Venire facias* ſhall be awarded for Trial.

And it may be returnable the Day after the *Teſte*; for the Proceſs ſhall be *de Die in Diem* in the ſame Seſſions. *R. Cro. Car.* 179.

If there be a Bill in the *Grand Seſſions* againſt *A.* and *B.* to which *A.* who lives there appears, if *B.* upon Service in *London* does not appear, his Land in *Wales* may be ſequeſtred. *Dub.* 2 *Mod. Ca.* 374.

[By *Stat.* 13 *G.* 3. *c.* 51. If Plaintiff in perſonal or in tranſitory Action, where the Cauſe ariſes in *Wales*, and is tried in next *Engliſh* County, does not recover by

by Verdict, Debt or Damages to 10*l.* and Judge certifies that Defendant reſided in *Wales*, at Service of meſne Proceſs, Judgment of Nonſuit ſhall be entered, unleſs Judge certifies that the Title of Land was chiefly in queſtion, and the Cauſe proper to be tried in *Engliſh* County. Plaintiff is to have his Damages out of Defendant's Coſts; the Verdict is a Bar to other Actions for the ſame.]

[Juſtices ſhall not make Deputies but for calling Courts, taking Fines, *&c.*]

[King may nominate Deputy, in Caſe of Sickneſs of Juſtice.]

[There may be Special Juries.]

[Juſtices may appoint Perſons to take Affidavits, and Recognizances.]

Vide more concerning *Wales* in *Action*, (N. 2.)

W A R.

(A) War.

THE King has Power to make War and Peace. *Vide in Prærogative*, (C. 1.)

How Soldiers are to be levied for the *Land*, or *Sea* Service, *Vide in Prærogative*, (C. 2.)

Command of the Forces. *Vide Prærogative*, (C. 3.)

Erection or Raiſing of Forts. *Vide Prærogative*, (C. 4.)

After War declared a Proclamation iſſues to notify it.

(B) Service of the King in his War.

(B. 1.) By Tenure.

MAVULT Princeps to be ſerved by his own Subjects, rather than by others, in his Wars. *Co. L.* 69. *a.*

By the *St.* 7 *Ed.* 1. It belongs to the King to defend all Force, *&c.* And the Earls, Barons, *&c.* are bound to aid their Sovereign at all Seaſons, if Need be.

If the King makes a Voyage Royal into *Scotland*, *&c.* whoſoever holds *per Feodum Militare* ought to be with the King well arrayed for the War for forty Days, and ſo *pro Rata*, if he holds by a Moiety, *&c.* of a Knight's Fee. *Lit. S.* 95.

And a Knight's Fee was computed not by the Quantity, but by the Value of his Land; for 20 *l. per Annum* was a Knight's Fee. *Co. L.* 69. *a.*

(B. 2.) By Contract.

So the King by Indenture inrolled in the *Exchequer* may contract with a Knight, *&c.* who has Tenants, *&c.* in the Country for ſo many Men for ſuch a Time to ſerve the King in his Wars. *Co. L.* 71. *a.*

And the Departure of a Soldier after Muſter, *&c.* was Felony by the *St.* 18 *H.* 6. 19. (which is now of no Force becauſe ſuch Form of *Militia* is diſuſed.) *Co. L.* 71. *a.* *R.* 6 *Co.* 27. *a.* *Vide Juſtices*, (8. 8.)

(B. 3.) By Commiſſion of Array.

So the King may iſſue a Commiſſion of Array, to raiſe Soldiers purſuant to the Direction 5 *H.* 4. *Semb.* 2 *Ruſh.* 1229. *ad* 1233.

(B. 4.) What Arms every one may keep.

So by the *St. Wint.* 13 *Ed.* 1. 6. Every Man ſhall have in his Houſe Harneſs to keep the Peace according to the Ancient Aſſiſe, *viz.* He that hath under 40*s.* *per Annum* Giſarms, Knives, and leſs Weapons; and he that hath under 40 *Marks* in Goods, Swords, Knives, and leſs Weapons: He that hath above 40*s.* and under 5*l.* *per Annum* a Sword, Bow and Arrows, and a Knife; if above 5*l.* *per Ann.* a Doublet, Iron Breaſt-plate, Sword and Knife: He that hath 10*l.* *per Ann.* and 20 *Marks* in Goods, an *Hanberge*, Iron Breaſt-plate, Sword and Knife: He that hath above 15*l.* *per Ann.* and 40 *Marks*, an Horſe, beſides the *Hauberge*, *&c.*

And *by this Statute* a View of Armor ſhall be by two Conſtables twice a Year.

By *this Statute and the Articles of Inquiſition thereon* 34 *Ed.* 1. Inquiry ſhall be made, if the People have Weapons in their Houſes according to the Quantity of their Lands and Goods.

But by the *St.* 1 *Ed.* 3. 5. None ſhall be charged to arm himſelf, otherwiſe than he was wont to be.

(B. 5.) Remedy againſt a Deſerter.

By the Common Law, if a Soldier, after receiving the King's Wages, departs from the Service, upon a Certificate by the Captain to Chancery, a Writ goes to the King's Serjeant at Arms *ad capiend' Conduct' &c.* 2 *Inſt.* 53.

Or a Writ to the Sheriff *ad arreſtandum* B. *qui Pecuniam recepit ad proficiſcendum in Obſequium Domini Regis, et non eſt profectus.* 2 *Inſt.* 53.

(B. 6.) But the King cannot charge the Subject for the Levying of Forces without Authority of Parliament.

But by the *St.* 1 *Ed.* 3. 7. *confirmed by the St.* 4 *H.* 4. 13. Whereas Commiſſions were granted to levy Men of Arms, and convey them to the King at the Charge of the Shire, *it was enacted*, it ſhall be done ſo no more. *Vide Parliament* (H. 22.)

And 20 *Ed.* 3. The King confirmed the Ordinance, That the Subject ſhall not be charged for Arms. 2 *Rol.* 173. *l.* 4.

By the *St.* 25 *Ed.* 3. 8. No Man ſhall be compelled to find Men of Arms, *&c.* if it be not by Common Conſent in Parliament, unleſs they hold by ſuch Service. *Confirmed by* 4 *H.* 4. 13.

(B. 7.) Nor for Maintenance of the Forces.

So by the *St.* 3 *Car.* (being a Petition of Right), *It was complained*, That Soldiers and Mariners in divers Counties have been diſperſed, and the Inhabitants againſt their Wills compelled to receive them into their Houſes, and to ſuffer them to ſojourn there, *And it was prayed*, That the People may not be ſo burthened in Time to come, to which the King anſwered, *Soit Droit fait come eſt deſirè.*

By the *St.* 1 *Ed.* 3. 7. No Commiſſions ſhall be awarded to prepare Men of Arms, and convey them to the King in *Scotland*, or elſewhere, at the Charge of the Shires.

By the *St.* 18 *Ed.* 3. 7. Men of Arms, *&c.* choſen to go in the King's Service out of *England* ſhall be at the King's Wages, from the Day they depart out of their Counties till they return.

So by the *St.* 1 *Ed.* 3. 5. None ſhall be compelled to go out of his Shire, but on Neceſſity, and ſudden Coming of ſtrange Enemies, and then but as uſual.

Vide more concerning *War* in *Diſcent*, (D. 6)—*Juſtices*, (K. 4.)—*Officer*, (K. 4.)—*Prærogative*, (C. 1, &c.)

WARD.

Vide Gardian, (H. 1, &c.)—*Prærogative*, (D. 59.)

WARDEN.

——of the Cinque Ports.

Vide Franchiſes, (E. 3.)

——of the Fleet.

Vide Chancery, (B. 8.)

WARDMOTE.

Vide Courts, (O. 6.)

WARRANT.

Vide Forceable Entry, (D. 18, 19.) — *Impriſonment*, (H. 6, &c) — *Pleader*, (3 K. 26.)—(3 M. 23.)

WARRANT OF ATTORNEY.

Vide Amendment, (E. 1, 2.)—*Attorney*, (B. 7, 8.)

WARRANTY.

Vide Garranty.

Warrantia Chartae.

Vide Garranty, (K. 1.)—*Pleader*, (3 N. 1, &c.)

WARREN.

Vide Chaſe, (D.—F.)

WAST.

(A) Waſt, By the Common Law.

(A. 1.) Prohibition of Waſt.

BY the Common Law a Prohibition might be awarded againſt a Tenant in Dower, or Guardian in *Chivalry*, for Prevention of Waſt by them. 2 *Inſt.* 299.

So

So againſt Tenant by the *Curteſy*. *Cont.* 2 *Inſt.* 145.

And ſuch Prohibition lay *quia Timet*, before Waſt committed.

So, if a Writ of Right or other Action is brought, and *pendente Lite* the Tenant commits Waſt, a Writ of *Eſtrepement* ſhall go. *R. Dal.* 1.

So, if Error be to reverſe a Common Recovery. *R. Cro. El.* 774.

So a Prohibition of Waſt lay by the Patron againſt the Parſon, or Vicar, to prevent Waſt in the Glebe, or Churchyard.

And the *St.* 35 *Ed.* 1. *Ne Rector proſternat Arbores in Cœmeterio* was only Affirmance of the Common Law. *R.* 11 *Co.* 49. *b.*

So it lay againſt a Biſhop, Abbot, Prebend, *&c.*

So, if the Incumbent commits Waſt in the Glebe or Lands of the Rectory *pendente Lite* in *Quare Impedit*, a Prohibition ſhall be granted. *R. Hob.* 36.

So ſince the *St. of Marlb.* 24. It lies againſt a Leſſee for Life, or for Years. 2 *Inſt.* 146.

So a Prohibition lies now, ſince the *St. of Glouceſter* 5. where it would lie at Common Law. 2 *Inſt.* 299.

Prohibition of Waſt was by a Writ directed to the Sheriff commanding him, *Quod non permittat quod A. faciat Vaſtum, &c.* 2 *Inſt.* 299.

And thereupon the Sheriff might take the *Poſſe Comitatus*, and prevent Waſt. 2 *Inſt.* 299.

But now by the *St. W.* 2. 14. It is ordained, that no Writ of Prohibition ſhall be awarded for the future, but a Writ of Summons. 2 *Inſt.* 389. 146.

(A. 2.) Action of Waſt.

So, by the Common Law, after Waſt committed an Action lies againſt Tenant in Dower, or Guardian in *Chivalry*.

So againſt Tenant by the *Curteſy*. 2 *Inſt.* 145, 300.

And it lay againſt all Tenants in Dower, by the Common Law, or by Cuſtom, *ad Oſtium Eccleſiæ, Ex Aſſenſu Patris*, or *de la pluis belle*. 2 *Inſt.* 303.

So againſt a Guardian in Right or in Deed. 2 *Inſt.* 305.

By Grant of a Subject, or of the King. 2 *Inſt.* 305.

So, againſt a Guardian in *Socage*, as well as in *Chivalry*. 2 *Inſt.* 135, 305. *F. N. B.* 59. *E. Cont. Co. L.* 54. *a.*

But, by the Common Law, Waſt did not lie againſt Leſſee for Life or for Years; for it was the *Laches* of the Leſſor, that he did not provide againſt Waſt. 2 *Inſt.* 299. 145. 5 *Co.* 13. *b.*

So, it does not lie by the Aſſignee of the Heir againſt Tenant by Curteſy, or in Dower. 2 *Inſt.* 301.

But Waſt does not lie in *Antient Demeſne*, becauſe the Court upon Default at the Grand Diſtreſs cannot make a Writ to the Sheriff to go to the Place waſted, according to the *St. W.* 2. 14. 2 *Sand.* 254.

(B) Waſt, By the Cuſtom of London.

(B. 1.) Waſt lies.

SO, by the Cuſtom of *London* Waſt lies at the Common Law for Waſt in Houſes there. 2 *Inſt.* 299.

And now, ſince the *St. of Glo.* 5. Waſt lies there in Caſes within that Statute as well as in others; for tho' the Statute gives an Action for Waſt in Caſes where it did not lie before, and gives alſo Treble Damages *et Locum vaſtatum*, yet it does not take away the Juriſdiction of any Court which before held Plea of Waſt. 2 *Inſt.* 299. *R.* 2 *Sand.* 254.

(B. 2.)

(B. 2.) And Writ of *Eſtrepement*.

So a Writ of *Eſtrepement* lies in *London*, *pendente Placito*, or after Judgment and before Execution, to ſtay Waſt. 2 *Inſt.* 328.

And it may be by Original Writ, ſued out of *Chancery* with the Original in the Suit, or after *pendente Placito*, or Judicial, granted by the Court, and directed to the Sheriff, the Party, or both. 2 *Inſt.* 328.

And this was explained by the *St. of Glo.* 13. which enacts, That if a Plea be moved in *London* by Writ, the Tenant ſhall not commit Waſt or *Eſtrepement* of the Tenement demanded, and, if he do, the Mayor and Bailiffs ſhall cauſe it to be kept at the Suit of the Demandant.

And now by the *St. Glo.* 13. it lies to prevent Waſt *pendente Placito*, and it judicially iſſues out of the Court where the Action is depending. 2 *Inſt.* 328.

So, *Eſtrepement* lies in all Real Actions where Damages are recovered. *Ibid.*

So in real Actions, tho' no Damages are to be recovered. *Semb.* 2 *Inſt.* 328.

And againſt every Tenant.

So, againſt his Feoffee, Vouchee, *Prayee* in *Aid*. 2 *Inſt.* 328.

So, againſt the Tenant and a Stranger. *Ibid.*

So, it lies in *Scire facias* upon a Fine and Recovery, *Quid Juris clamat*, Attaint, tho' no Land is demanded. *Ibid.*

And, if the Land eſcheats *pendente Placito*, the Writ of *Eſtrepement* extends to it. 2 *Inſt.* 329.

In *Eſtrepement* the Tenant ſhall not have his Age; for it is in Nature of a Treſpaſs. 2 *Inſt.* 328.

After *Eſtrepement* delivered to the Sheriff, he may reſiſt him who attempts Waſt, and take the *Poſſe Comitatus*, and impriſon him, if neceſſary. 2 *Inſt.* 329.

Such Writ is only a Prohibition from committing Waſt, and the Parties may plead, upon the Attachment. *Ibid.*

By Virtue of this Writ the Plaintiff recovers Damages for the Waſt committed *pendente Placito*. *Ibid.*

So upon *Eſtrepement* after Judgment, tho' no Prohibition before delivered. *Ibid.*

But in *Eſtrepement pendente Placito*, the Plaintiff does not recover Damages, till the principal Suit is determined. 2 *Inſt.* 328.

Nor Damages for Waſt committed by a Stranger *pendente Placito*, without the Privity of the Tenant. *Ibid.*

In Waſt the Plaintiff does not recover Damages for the Waſt *pendente Placito*, but the Plaintiff muſt have a Writ of *Eſtrepement*. 2 *Inſt.* 329.

If the Defendant commits Waſt after a Writ of *Eſtrepement*, the Plaintiff may declare on the Writ of *Eſtrepement*. *Mo.* 100.

To the Declaration in a Writ of *Eſtrepement* the Defendant may plead, *no Waſt committed*. *Ibid.*

If it be found by Verdict in a Writ of *Eſtrepement*, that the Defendant has committed Waſt, the Plaintiff ſhall have Judgment, and recover Damages and Coſts. *Ibid.*

(C. 1.) Waſt by the Statute of Glouc. 5.

AND now by the *St.* 6 *Ed.* 1. 5. A Man may have a Writ of Waſt in *Chancery* againſt a Man, who holds by the Law of *England*, or in other Manner, for Term of Life, or Years, or in Dower: And he, who ſhall be attainted of Waſt, ſhall loſe the Thing, which he has waſted, and make Satisfaction of Treble of what the Waſt ſhall be taxed at.

And by *St. W.* 2. 13 *Ed.* 1. 14. Prohibition of Waſt is taken away, and a Writ of Summons given for all Waſt.

By the *St. of Marlb.* 52 *H.* 3. 23. All Farmers were prohibited to commit Waſt, and this was the firſt Statute againſt them. 2 *Inſt.* 145.

And therefore, ſince this Statute, if the Leſſee for Life or for Years had committed voluntary or permiſſive Waſt, he ſhould anſwer full Damages. 2 *Inſt.* 145.

Vide Poſt, (F. 2.)

By

By the *St. W.* 2. 13 *Ed.* 1. 22. If there are Jointenants or Tenants in Common, and one commits Waſt, the other may have a Writ of Waſt, whereupon the Defendant ſhall have his Election to have Partition and take *Locum vaſtatum* for his Share, or to find Surety that he will not take more than his Proportion. 2 *Inſt.* 403. *Co. L.* 200. *b.*

And this extends to Jointenants, *&c.* only for Life. 2 *Inſt.* 402. *Co.* 200. *b.*

But it does not extend to Waſt in Cattle, Houſe, or other Place for Habitation. 2 *Inſt.* 402.

Nor to Waſt in a Dovehouſe. *Co. L.* 200. *b.*

Nor to Waſt by one Parcener. *Ibid.*

(C. 2.) By whom it lies.

Waſt is always ſuppoſed, to the Diſheriſon of the Plaintiff, and therefore it ſhall be brought by him, who has the immediate Reverſion, or Remainder, in Fee, or in Tail. *Co. L.* 53. *a.*

A Man, who claims the Inheritance by Purchaſe, may have Waſt, as well as if he claimed by Deſcent, tho' the Statute ſpeaks only of Inheritors. 2 *Rol.* 825. *l.* 44.

So he who claims in Remainder. 2 *Rol.* 825. *l.* 25.

So a Lord, who has the Inheritance by *Eſcheat*. 2 *Rol.* 825. *l.* 30.

The Grantee of the King upon Attainder. *Co. Ent.* 699. *a.*

So he in Reverſion or Remainder in Tail, as well as in Fee. 2 *Rol.* 825. *l.* 25. *Hut.* 110. 2 *Inſt.* 302.

So, if Tenant in Common leaſes for Years his Part to his Companion, he may have Waſt, and recover a Moiety of the Place waſted and of the Damages. *Per* 2 *J. Mo.* 71.

So he, who has the Inheritance, may join another with him, who has not an Eſtate of Inheritance, in an Action for Waſt: As, Huſband and Wife may have Waſt, where the Reverſion, or Remainder, is to them and the Heirs of the Huſband. 2 *Rol.* 825. *l.* 41.

So, if the Reverſion be granted to *A.* and *B.* and the Heirs of *B.* they may join. *Co. L.* 53. *b.*

So a ſurviving Parcener, and the Huſband of another Parcener, being Tenant by the *Curteſy*, may join in Waſt. *Co. L.* 53. *b.* *Dub. per Treby Lut.* 803.

So two Joint-tenants for Life, and to the Heirs of One, may join. *Co. L.* 53. *b.* 42. *a.*

So, it is ſufficient, if the Plaintiff has the immediate Inheritance at the Time of the Action, tho' he had not at the Time of the Waſt, or will not have by Poſſibility after: As, if Tenant for Life or Years, Remainder for Life, *&c.* commits Waſt, and afterwards *B.* in Remainder dies, or ſurrenders, the Reverſioner ſhall maintain Waſt. *Co. L.* 54. *a.* 2 *Rol.* 829. *l.* 10, 25. *Mo.* 387. *R.* 5 *Co.* 76. *Jon.* 51. *Al.* 82.

So, if a Leaſe for Life or Years was made to *A.* Remainder to *A. pur autre Vie*; for both Eſtates are in the Leſſee. 2 *Inſt.* 301.

So, if the *meſne* Remainder or Reverſion for Life was without Impeachment of Waſt. *R. Jon.* 51. 2 *Cro.* 688.

So, if the Remainder for Life be upon a Contingency, before the Contingency happens, the Reverſioner may have Waſt. *R. Al.* 82.

Or, if there are contingent Remainders or Uſes, before they come *in Eſſe*. *R. Al.* 83.

So, if the Remainder be only for Years, the Reverſioner ſhall have Waſt, notwithſtanding the *meſne* Remainder. *Co. L.* 54. *a.* 2 *Inſt.* 301.

So, if a Leaſe be made by him in Reverſion to commence at a future Day; for this is only a future Intereſt. *Co. L.* 54. *a.* 2 *Rol.* 829. *l.* 30.

(C. 3.) By whom not.

But Waſt does not lie by him, who has not the immediate Inheritance in him: And therefore, if a Leaſe be to *A.* for Life or Years, Remainder to *B.* for Life, Waſt does not lie by him in Fee, ſo long as the Eſtate of *B.* continues. *Co. L.* 54. *a.* *R. Al.* 81. 2 *Rol.* 829. *l.* 10, 25. *Per* 2 *J. Mo.* 18. *R.* 2 *Cro.* 688. 2 *Inſt.* 301.

So, if a Leaſe be to *A.* for Life or Years, and He in Reverſion grants the Reverſion for Life to *B.* during the Continuance of the Eſtate of *B.* he ſhall not have Waſt.

So, if he grants the Reverſion for Years, he ſhall not have Waſt during the Term. *Co. L.* 54. *a.*

So, if Tenant in Tail by Fine grants, or bargains and ſells, *totum Statum ſuum*, the Grantee ſhall not have Waſt; for he has no Inheritance. *R.* 3 *Leo.* 60. *Vide Eſtate*, (B. 33.)

Tho' he is Tenant in Tail, with Remainder in Fee; for, tho' the Grantee has the Fee, there is a *meſne* Eſtate Tail. *R.* 3 *Leo.* 60.

So Waſt does not lie by Tenant in Tail after Poſſibility. 2 *Rol.* 825. *l.* 31.

Tho' Waſt was committed before the Death of Huſband, or Wife, upon whom the Iſſue were to be begotten. *Mo.* 18.

So, if there be Tenant for Life, Remainder to Huſband and Wife in ſpecial Tail, Remainder to the Heirs of the Huſband, and the Wife dies without Iſſue, the Huſband ſhall not have Waſt. *Dub. Mo.* 18.

So Waſt does not lie by him, who had not the Inheritance in him at the Time of the Waſt done: And therefore it does not lie by an Heir for Waſt in the Time of his Anceſtor. 2 *Inſt.* 305.

Nor the Succeſſor of a Sole Corporation; as, Biſhop, Archdeacon, Parſon, *&c.* for Waſt in the Time of the Predeceſſor. 2 *Rol.* 824. *l.* 43, 49. *R.* 1 *Rol.* 432.

Nor a younger Son, for Waſt in the Time of his Elder Brother, who died before Actual Seiſin, whereby he makes his Title as Heir to his Father. 2 *Rol.* 825. *l.* 10.

Nor Grantee of a Reverſion for Waſt before his Grant.

Or after the Grant of the Reverſion, and before Attornment. 2 *Rol.* 825. *l.* 15.

Nor the Grantor, for Waſt after Grant of the Reverſion, and before Attornment. 2 *Rol.* 825. *l.* 15.

Nor a Lord by Eſcheat, for Waſt before the Eſcheat. 2 *Rol.* 825. *l.* 6.

Yet Waſt lies by the ſurviving Jointenant, for Waſt in the Life of his Companion.

And by a Surviving *Parcener*, for Waſt in her Siſter's Time. 2 *Inſt.* 305.

So Waſt does not lie by him, who has not the ſame Eſtate continuing in him, which he had at the Time of the Waſt committed: As, if a Reverſioner, after Waſt committed, aliens, and retakes an Eſtate to himſelf and his Heirs, he cannot afterwards have Waſt, which conſiſts in Privity. *Co. L.* 53. *b.*

So, if he grants the Reverſion to the Uſe of him and his Wife and the Heirs of himſelf. *Co. L.* 53. *b.*

(C. 4.) Againſt whom it lies.

Waſt by the Common Law was only againſt Tenant by the *Curteſy*, in Dower, or Guardian. *Vide Ante*, (A. 2.)

And now by the *St. of Glo.* 5. It lies alſo againſt Leſſee for Life, or Years. *pur autre Vie, quamdiu ſe bene geſſerit, &c.* 2 *Inſt.* 301.

But it is uſually brought upon the Statute againſt the Tenant by the Curteſy. *F. N. B.* 60. *K.*

So it lies againſt a Deviſee for Life, or for Years. 2 *Rol.* 826. *l.* 25.

So,

So, if the Eſtate for Life or Years be forfeited to the King for Treaſon, &c. Waſt lies againſt the King's Grantee, tho' he comes in in the *Poſt*. *Per Co.* 2 *Rol.* 826. *l.* 20. 2 *Rol.* 20.

If Tenant for Life or for Years aſſigns his Eſtate, Waſt lies againſt the Aſſignee for Waſt done after the Aſſignmeut. *Co. L.* 54. *a.* *R. Cro. El.* 683.

So, if Leſſee makes an Underleaſe to *B.* who commits Waſt, an Action lies againſt him.

If Tenant by *Curteſy* or in Dower aſſigns his Eſtate, and the Heir before or after the Aſſignment grants his Reverſion, the Grantee ſhall have Waſt againſt the Aſſignee for Waſt afterwards committed; for the Privity is gone. *Co. L.* 54. *a.* 2 *Inſt.* 301.

If Tenant in Tail after Poſſibility aſſigns his Eſtate, Waſt lies againſt him. 2 *Inſt.* 302.

If Tenant by the *Curteſy* makes a Leaſe for Years, and the Reverſioner confirms it, and Tenant by the *Curteſy* dies, Waſt lies againſt the Leſſee for Years. 2 *Inſt.* 302.

So, if Tenant for Life or Years aſſigns, excepting the Trees, and the Aſſignee cuts them down, Waſt lies againſt him. 2 *Inſt.* 302. 2 *Rol.* 454. *l.* 40.

So, if a Lord enters upon his *Villein*, Waſt lies againſt him for Waſt afterwards, tho' he comes in in the *Poſt*. *Co L.* 451. *a.* 2 *Inſt.* 301.

So it lies againſt an Occupant. *Co. L.* 54. *a.* 2 *Inſt.* 301.

Tho' he takes, as ſpecial Occupant. *Co. L.* 54. *a.*

So againſt him, who takes a Term, as Executor, or Adminiſtrator. 2 *Inſt.* 302. *Co. Ent.* 693, 694.

So againſt an Executor *de ſon Tort* of a Term. *R.* 3 *Mod.* 93.

Waſt ſhall be brought, generally, againſt him who commits the Waſt. *Co. L.* 54.

And therefore, if Leſſee for Life or for Years commits Waſt, and afterwards aſſigns his Eſtate to another, Waſt lies againſt him in the *Tenet*. 2 *Rol.* 829. *l.* 45. 2 *Inſt.* 302.

So, if a Guardian commits Waſt, and afterwards grants over his *Ward*. 2 *Rol.* 829. *l.* 50. *Cont. Co. L.* 54.

So, if Grantee of a Tenant for Life or Years upon Condition commits Waſt, and afterwards the Leſſee enters for the Condition broken. *Co. L.* 54. *a.* 2 *Inſt.* 302.

So it lies againſt Tenant *pur autre Vie*, or for Years, in the *Tenuit* after the Death of the *Ceſtui que Vie*, or the Term expired. 2 *Rol.* 830. *l.* 8, 14.

So againſt an Executor, who commits Waſt, and then aſſents to a Deviſe of the Term. 5 *Co.* 12. *b.*

So againſt a Succeſſor, for Waſt by his Predeceſſor depoſed, *quamdiu* he is alive. 2 *Rol.* 827. *l.* 40, 43.

So againſt a Huſband, who has a Term as Survivor, for Waſt during the Coverture. *Co. L.* 54. *a.*

But the Action ſhall be againſt Tenant by the *Curteſy*, in Dower, for Life or for Years, tho' Waſt be committed by a Stranger. *Co. L.* 54. *a.* 2 *Inſt.* 146. 2 *Rol.* 821. *l.* 5.

Tho' the Leſſee be an Infant, *Feme Covert*, &c. *Co. L.* 54. *a.* 2 *Inſt.* 303.

Tho' a Stranger diſſeiſes the Leſſee and commits Waſt. 2 *Rol.* 821. *l.* 10. *D.* 1 *Leo.* 264.

Tho' the Leſſee enfeoffs a Stranger upon Condition, who commits Waſt, and afterwards the Leſſee enters for the Condition broken. 2 *Rol.* 828. *l.* 25.

Tho' the Waſt was for cutting down Timber upon a Contract with Tenant in Tail in his Life-time. *R. Hard.* 96.

So if *B.* has Common of *Eſtovers* in a Wood demiſed, and in taking his *Eſtovers*, he commits Waſt, an Action lies againſt the Leſſee; for *B.* was a Stranger for this Purpoſe. 2 *Rol.* 821. *l.* 15.

So, if a Monk commits Waſt, where his Sovereign is Guardian. 2 *Rol.* 821. *l.* 30.

If

If Tenant in Dower be of a Manor, and a Copyholder commits Waſt. 2 *Inſt.* 303.

So, if Tenant by *Curteſy*, or in Dower, aſſigns his Eſtate to *B.* who commits Waſt, an Action lies by the Heir againſt the Tenant by *Curteſy*, or in Dower; for there is a Privity between them. *Co. L.* 54. *a.*

And it muſt be againſt them, and not againſt the Aſſignee. 2 *Inſt.* 301.

So by the *St.* 11 *H.* 6. 5. Waſt lies againſt the *Pernor* of the Profits, tho' he has aſſigned his Eſtate. 2 *Inſt.* 302.

And tho' there be an Aſſignment by the Aſſignee, it lies againſt the Aſſignee who took the Profits. *R.* 5 *Co.* 77. *b.*

And by him in Remainder, as well as by him in Reverſion. *R.* 5 *Co.* 77. *b.*

So, if there be Jointenants of an Eſtate for Life or Years, and one commits Waſt, an Actions lies againſt both; but the Treble Damages ſhall be recovered only againſt him, who committed the Waſt. 2 *Inſt.* 302.

So, if they are Jointenants of a Ward, and one commits Waſt. *Co. L.* 54. *a.*

If one Jointenant enters into Religion, Waſt lies againſt his Companion alone. 2 *Rol.* 828. *l.* 38.

So Waſt lies againſt Huſband and Wife for Waſt committed by the Wife before Coverture. 2 *Rol.* 827. *l.* 20.

Or for Waſt committed during Coverture, when the Huſband is ſeiſed or poſſeſſed in Right of his Wife, or jointly with his Wife. 2 *Rol.* 827. *l.* 5, 16, 18. *Cro. El.* 357.

(C. 5.) Againſt whom not.

But if the King, Tenant for Life or Years, commits Waſt, an Action does not lie againſt him; for the King is not within the *St. of Glo.* 5.

And therefore, if an Eſtate for Life or Years be forfeited to the King for Treaſon, *&c.* Waſt does not lie againſt the King. *Mo.* 335.

If Tenant by *Curteſy*, or in Dower, or for Life, dies after Waſt committed, Waſt does not lie againſt his Executor or Adminiſtrator. 2 *Rol.* 828. *l.* 34.

So, if Leſſee for Years dies after Waſt committed, tho' the Term goes to his Executor or Adminiſtrator. 2 *Inſt.* 302.

So, if an Abbot, *&c.* Guardian, commits Waſt and dies, Waſt does not lie againſt his Succeſſor. 2 *Rol.* 827. *l.* 40.

If a Woman, Tenant in Dower, takes Huſband, who commits Waſt, and then the Wife dies, Waſt does not lie againſt the Huſband. 2 *Rol.* 827. *l.* 22.

So, if the Wife was Tenant for Life; for the Huſband was ſeiſed *in Jure Uxoris*, *Co.* 54. *a.* 2 *Inſt.* 301. *Semb. Cro. El.* 357.

So Waſt does not lie againſt a Guardian in *Socage*; for he may have Account. *Co. L.* 54. *a.* *Cont.* 2 *Inſt.* 135, 305. *Vide Ante*, (A. 2.)

Nor againſt Tenant by Statute Merchant, Staple, Recognizance, or *Elegit*; for the Conuſor may have a *Venire facias ad computandum*, and *recoupe* in Damages. *Co. L.* 54. *a.* 2 *Inſt.* 302.

Nor againſt Tenant in Tail after Poſſibility. *Co. L.* 54. 2 *Inſt.* 302.

Nor againſt Leſſee at Will. 5 *Co.* 13. *b.* *Cro. El.* 777, 784.

So Waſt does not lie againſt Tenant for Life or Years without Impeachment of Waſt.

So, if Tenant for Life, without Impeachment, leaſes for Years, Waſt does not lie againſt the Leſſee for Years; for his Eſtate is derived from him, who was diſpuniſhable. *R. Jon.* 51.

So, if a Leaſe for Life or Years be without Impeachment of Waſt for two Years, Waſt does not lie after the two Years expired for Waſt during thoſe Years. *Mo.* 18.

(D. 1.) Waſt, what ſhall be.

WAST, Deſtruction, and Exile of *Villeins*, are all prohibited. *Co. L.* 53. *b.*

So *Waſt* contains alſo *Exile*; for tho' the *St. of Marlb.* 23. ſpeaks of Waſt, Sale, and Exile, yet the *St.* of *M. Ch.* 4. *W.* 2. 14. and the *St. of Glo.* 5. mention only Waſt and Deſtruction, and Exile is comprehended under the general Word, *Waſt*. *Co. L.* 53. *b.*

Waſt is voluntary, or actual Waſt, and permiſſive Waſt. *Co. L.* 53. *a.*

(D. 2.) In Houſes.

By the *St. Marlb.* 23. and *St. Glo.* 5. It appears that Waſt may be done in Houſes.

And therefore, if the Leſſee, *&c.* pull down the Houſes demiſed it will be Waſt. *Co. L.* 53. *a.*

So, if he ſuffers a Houſe to be uncovered, whereby the Timber decays. *Co. L.* 53. *a.*

Tho' the Timber be not thereby thrown down. 2 *Rol.* 815. *l.* 31.

So, if the Houſe was uncovered at the Commencement of the Leaſe; yet it will be Waſt, if the Leſſee pulls it down. *Co. L.* 53. *a.*

Or, if it was ruinous at the Commencement, and he ſuffers it to be more ruinous. 2 *Rol.* 818. *l.* 2.

So, if the Leſſee ſuffers *Statiuncula ante Oſtium* to be uncovered, whereby the Timber thereof becomes rotten, it will be Waſt. *R.* 2 *Rol.* 814. *l.* 25

Or Glaſs Windows to be broke, or carried away. *Co. L.* 53. *a.* *R.* 4 *Co.* 63. *b.*

Or the Wainſcot, Benches, Doors, Furnaces, *&c.* fixed to the Houſe. *Co. L.* 53. *a.*

Tho' they are fixed by the Leſſee himſelf by Nails, Screws, or otherwiſe. *R.* 4 *Co.* 64. *a.* *R. Mo.* 177. *Cont. per Dod.* 1 *Rol.* 216.

So, if he permits the Walls of a Houſe to be decayed for Want of Plaiſtring, whereby the Timber is rotted. *R.* 2 *Rol.* 816. *l.* 50.

Or the Chambers of the Houſe. *R.* 2 *Rol.* 816 *l.* 45.

Tho' the Timber be not thereby rotted. *Semb.* 2 *Rol.* 817. *l.* 1.

So, if he does not ſcour a Mote, *&c.* whereby the Groundſell, *&c.* is decayed. *R. Ow.* 43.

So, it will be Waſt, if the Walls are ſuffered to be decayed, tho' the Timber was in Decay at the Commencement of the Leaſe. 2 *Rol.* 817. *l.* 53.

If he ſuffers the Houſe to be burnt by Neglect or Miſchance. *Co. L.* 53. *b.* 2 *Rol.* 820. *l.* 42.

So, it will be Waſt, tho' there be no Timber upon the Land demiſed for Repairs. *Co. L.* 53. *a.*

Tho' the Houſe was uncovered, *&c.* by Tempeſt, if it be ſuffered afterwards to remain in Decay. *Co. L.* 53. *a.* *Per* 2 *J. Mo.* 62. 2 *Rol.* 818. *l.* 2.

So, it will be Waſt, if the Leſſee pulls down the Houſe, and rebuilds it leſs than before. 2 *Rol.* 815. *l.* 33.

So, if he rebuilds it larger, to the Prejudice of the Leſſor; for it is more Charge to repair. 2 *Rol.* 815. *l.* 35.

So, if the Leſſee builds a new Houſe, where there was none before. *Co. L.* 53. *a.* *Per* 2 *J.* 2 *Rol.* 815. *l.* 45. *Cont. per Wood, Kel.* 38. for it will be for the Leſſor's Profit, and, if not, he may throw it down. *D. cont. Hob.* 234.

So, if he alters the Houſe to the Leſſor's Prejudice: As, if he converts a Parlour into a Stable. *Per Vavaſor, Kel.* 39. 2 *Rol.* 815. *l.* 31.

Or changes a Corn Mill to a Fulling Mill. *Per* 2 *J.* 2 *Rol.* 814. *l.* 46. *D.* 2 *Cro.* 182.

Or to a Horſe Mill, tho' it be for the Leſſor's Advantage. 2 *Cro.* 182.

If he turns two Rooms into one; for if it would be for the Leſſor's Advantage, it may be ſhewn on the other Side. *R. Kel.* 38. 2 *Rol.* 815. *l.* 37.

So, if he converts a Brewhouſe of 120*l. per Ann.* into Tenements of 200*l. per Ann. R.* 1 *Lev.* 309, 311. 1 *Mod.* 94.

So, if he builds a new Houſe, and afterwards ſuffers that to be decayed. *Adm.* 42 *Ed.* 3. 21. *b. Co. L.* 53. *a.*

But, if the Houſe was uncovered at the Commencement of the Leaſe, it is no Waſt, if the Leſſee ſuffers it to be decayed without pulling down. *Co. L.* 53. *a. R. Ow.* 93.

Or, if the Walls were uncovered. *Co. L.* 53. *a.*

Or, if the Houſe was ruinous, and the Leſſee ſuffers it to be as it was, if it is not more ruinous.

So, it is no Waſt, if the Leſſee removes Furnaces, Coppers, or other Utenſils of Trade, tho' fixed to the Freehold during his Term. 1 *Sal.* 368. *Semb.* 21 *H.* 7. 27. *a. R.* 20 *H.* 7. 13. *b.*

But if it continues till the End of the Term, he cannot remove it; for it is given to the Reverſioner. 1 *Sal.* 368. 21 *H.* 7. 27. *a.* 20 *H.* 7. 13. *b.*

(D. 3.) In Gardens, *&c.*

So Waſt may be committed in a Garden or Orchard, tho' *Orchard* is not named in the Statute. 2 *Rol.* 817. *l.* 33.

As, if Leſſee cuts down Pear Trees, Apple Trees, or other Fruit Trees. *Co. L.* 53. 2 *Rol.* 817. *l.* 30.

Or, if they are thrown down by Tempeſt, and the Leſſee afterwards roots them up, or cuts down the *Germins*, growing, without planting New. 2 *Rol.* 817. *l.* 35.

So, if the Leſſee deſtroys, or ſuffers the Stock of a Dovecote, Warren, Park, Fiſhpond, Pool, *&c.* to be diminiſhed. *Co. L.* 53. *a. R.* 4 *Leo.* 240. 2 *Inſt.* 304. *R.* 2 *Leo.* 222.

Or throws down the Pales of a Park or Warren. *Ow.* 66.

Or ſtops up the Holes of a Dovecote. *Ibid.*

Or throws down the Banks, *&c.* of a Fiſhpond, Lake, *&c. Ow.* 67.

But if the Leſſee deſtroys, *&c.* yet it is no Waſt, if he leaves a ſufficient Stock. 2 *Leo.* 222.

(D. 4.) In Land, Meadow, *&c.*

So it will be Waſt, if the Leſſee ſuffers the Sea to ſurround arable Land, Meadow, or Paſture. 2 *Rol.* 816. *l.* 40. If it is by his Default. *Mo.* 62, 73.

Or, if he ſuffers a Wall or Bank againſt the Sea, a River, *&c.* to be ruinous, by which the Water ſurrounds a Meadow, *&c.* and renders it uſeleſs. *Co. L.* 53. *b. Mo.* 69.

So, if he digs up the Surface of the Land and carries it away. *R.* 2 *Rol.* 816. *l.* 15.

If the Leſſee converts Arable to Wood, or *è contra*, it will be Waſt. *Co. L.* 53. *b.*

Or Meadow to Arable. *Co. L.* 53. *b. Mo.* 101. 2 *Rol.* 815. *l.* 4. 814. *l.* 50.

Or Paſture. 2 *Rol.* 814. *l.* 50. 1 *Ch. Rep.* 106, 116.

Or Meadow to Orchard, Hop-garden; tho' it be Melioration. 2 *Leo.* 174.

Or converts a Hop-garden to Tillage. *Ow.* 67.

If Leſſee for Life or Years opens new Mines in Land, demiſed without Mention of Mines, it will be Waſt. *Co. L.* 53. *b. R.* 5 *Co.* 12. *R.* 2 *Mod.* 193.

So,

So, if he digs for Gravel, Lime, Clay, Brick, Earth, Stone, &c. in Pits not open. *Co. L.* 53. *b.* *Mo.* 101.

But, it is not Waſt, if Land, &c. is ſurrounded by the Violence of a Tempeſt.

So, if Paſture be converted to Tillage for Improvement of the Soil. 2 *Rol.* 814. *l.* 47.

Or, where it was ſometimes Paſture, and ſometimes Arable. *Ibid.*

Or, if it was ſtocked with Conies, it not being a Warren by Charter or Preſcription. *R.* 2 *Rol.* 815. *l.* 15. 816. *l.* 15.

So, if it was a Warren. *R. Ow.* 66. *Vide ante,* (D. 3.)

So, it is no Waſt, if the Land lies fallow, by which Means it is over-run with Buſhes, &c. tho' it is bad Huſbandry. 2 *Rol.* 814. *l.* 35.

If Trenches are dug in a Meadow, to draw off the Water. *R.* 2 *Rol.* 820. *l.* 23. 2 *Leo.* 174.

If Woad be ſown againſt the End of the Term, tho' it is not ripe for many Years. *Semb.* 2 *Rol.* 815. *l.* 50.

So, it is not Waſt to dig for Metal, Coal, &c. in Mines open at the Time of the Leaſe. *Co. L.* 53. *b.* *R.* 5 *Co.* 12.

Or if Mines were not demiſed, if the Land was demiſed with all Mines. *R.* 5 *Co.* 12.

It will not be Waſt for a Parſon, Vicar, &c. to dig or open Mines in his Glebe. *Semb.* 1 *Sid.* 152.

(D. 5.) In Wood, &c.

So, it is Waſt, if a Leſſee cuts down Timber. *Co. L.* 53. *a.*

Oak, Aſh, and Elm are Timber, after the Age of twenty Years, throughout the Realm. *Co. L.* 53. *a.* *Dy.* 65. *a.*

And where they are ſcarce, by the Cuſtom of the Country, Beach, Willow, Hornbeam, &c. may be accounted Timber. *Co. L.* 53. *a.* *R. Mo.* 812.

And therefore, if a Leſſee cuts down Trees, which by Law, or the Uſage of the Country, are eſteemed Timber, it will be Waſt. *Co. L.* 53. *a.*

So, if it be found that he cut down Black-Thorn, *exiſtent' Arbores Maheremiales,* it will be Waſt. *R.* 2 *Rol.* 819. *l.* 52. *Cro. Car.* 531.

So, if he cuts down White-Thorn, where it is in a large Quantity, or made Wood. 2 *Rol.* 817. *l.* 12. 2 *Cro.* 126.

So, if a Leſſee cuts down young Oaks, &c. being of twenty Years Growth, it will be Waſt. 2 *Rol.* 817. *l.* 28. 819. *l.* 45.

Or deſtroys the *Germins.* *Co. L.* 53. *a.*

So, if a Leſſee does an Act, by which the Timber decays: As, if he lops and tops them. *Dy.* 65. *a.* *Co. L.* 53. *a.*

So, if a Leſſee cuts down Birch, Willow, Maple, &c. which are not Timber, if growing in Defence of the Houſe. *Co. L.* 53. *a.*

Or upon the *Scite* of the Houſe. *D. Hob.* 219.

So, if he roots up or deſtroys Quickſet of White-Thorn, &c. *Co. L.* 53. *a.* *R.* 2 *Cro.* 126.

If he extirpates or deſtroys the *Germins* of Underwood, which may be cut. *Co. L.* 53. *a.*

So it will be Waſt, if a Leſſee cuts down Trees for Fuel, when there is *Lignum aridum* ſufficient. *Co. L.* 53. *b.* 2 *Rol.* 820. *l.* 10.

If he cuts down for new Pales, Fences, &c. where none were before. *Co. L.* 53. *b.*

Or for a new Houſe. 2 *Rol.* 822. *l.* 35.

If he ſells the Trees, and with the Money repairs. *Co. L.* 53. *b.*

Or afterwards re-purchaſes, and uſes for Repairs. *Co. L.* 53. *b.* 2 *Rol.* 823. *l.* 15.

If he cuts down for Repairs which are not neceſſary. 2 *Rol.* 822. *l.* 40.

Or, for Repairs, when there ſhall be Occaſion. *R. Cro. El.* 593.

Or, for Repairs, which happened by the Leſſee's own Default. *Co. L.* 53. *b.* 2 *Rol.* 822. *l.* 38.

If

If he cuts down for the Uſe of Mines, tho' the Leaſe was with all Mines; for he can take only for Things directly neceſſary. *R.* 2 *Rol.* 823. *l.* 30. *Hutt.* 19. *Hob.* 234.

Tho' the Mines were open at the Time of the Leaſe, and the Leſſor and former Leſſees uſed to take Timber for ſuch Uſe; for the Leſſor may do as he pleaſes, and the *Tort* of the former Leſſee is no Excuſe. *Per Hob.* 235.

But cutting down Trees, which are not Timber, nor ſtand for Defence of the Houſe, is not Waſt. *Co. L.* 53. *a.*

Nor Trees that were Timber, when they are dead, *nec Fructum nec Folia portan'*. *Co. L.* 53. *a.* 2 *Rol.* 814. *l.* 17.

So cutting the Underwood of Oak, Aſh, Willow, *&c.* is no Waſt. *Per* 2 *J.* 2 *Rol.* 817. *l.* 17, 20.

Tho' it be above twenty Years ſince the laſt Fall. *Semb.* 1 *Sid.* 300.

So the cutting down Buſhes, White-Thorn, *&c.* is no Waſt. *R.* 2 *Cro.* 126.

So cutting down Timber for neceſſary *Botes*, allowed by Law to the Leſſee, is no Waſt: As, for Fewel, Plowbote, Hedgebote, *&c.* *Co. L.* 53. *b.*

Or for Repairs. *Ibid.*

For Repair of Pales, Gates, Fences, *&c.* *Ibid.*

Tho' the Leſſee covenants to repair at his own Charge; for this does not take away the Liberty which the Law allows. *R. Mo.* 23.

So, tho' the Leſſor covenants to repair. *Co. L.* 54. *b.*

So, if the Leaſe be without Impeachment of Waſt; yet the Leſſee may cut down Trees for Repair, if he pleaſes. *Co. L.* 54. *b.*

So, if the Houſe was ruinous at the Entry of the Leſſee, in which Caſe he will not be liable to Waſt, if it happens. *Co. L.* 54. *b.* 2 *Rol.* 823. *l.* 10.

Or the Decay was in the Time of the Anceſtor of the Plaintiff, who is now diſpuniſhable. 2 *Rol.* 822. *l.* 45.

So, if it be for Repair of Things uſeful, tho' they are not abſolutely neceſſary: As, for Water-Troughs to be fixed in the Ground for his Cattle. 2 *Rol.* 823. *l.* 22.

(E) What ſhall not be Waſt.

(E. 1.) In reſpect of the Value.

BUT the Leſſee ſhall not be ſued for Waſt, if the Value does not amount to 40*d.* *Co. L.* 54. *a.* *Noy* 4.

If it does not amount to more than 40*s.* *Wynch* 5.

And therefore, if Waſt is found, only to the Value of 3*s.* or leſs, no Judgment ſhall be given. 2 *Rol.* 824. *l.* 10, 15, 25. *Noy* 4.

Tho' the Defendant confeſſes the Waſt. *Noy* 4. *Winch.* 5.

And if Judgment is given, it will be Error. *Per And. Noy* 4.

Yet where the Value was to 40*d.* it has been allowed for Waſt. *Co. L.* 54. *a.* *Noy* 4.

And ſeveral Particulars may be united to make ſuch Value. *Co. L.* 54. *a.* 2 *Rol.* 824. *l.* 20.

(E. 2.) If the Place be not demiſed.

So Waſt does not lie, if the Place, in which, is no Part of the Demiſe: As, if the Leſſor demiſes, except the Woods, and afterwards the Leſſee cuts down the Woods; for the Soil is excepted. *Per* 2 *J. Dy.* 19. *a.* *Adm. Cro. El.* 690.

But if there be a Proviſo, that it ſhall be lawful for the Leſſor to cut down Trees, Waſt lies, if the Leſſee cuts down; for it is a Covenant, and not an Exception. *R. Cro. El.* 690. *Dy.* 19. *a. in Marg.*

But

But, if a Leſſee aſſigns his Eſtate to *A.* except the Woods, and *A.* cuts down, Waſt lies againſt him; for, as to the Leſſor, they are Parcel of the Demiſe. 2 *Inſt.* 302. *Dub. Cro. El.* 17. *R. Cro. El.* 683. 1 *Leo.* 49.

So, if he aſſigns, except the Mines, and afterwards digs; for the Exception is void. *R. Cro. El.* 683.

(E. 3.) Or demiſed without Impeachment.

So it does not lie, if the Leaſe be without Impeachment of Waſte. *Mo.* 327.

Sine Impedimento vel Impeditione Vaſti, is *tantamount* to *Sine Impetitione*. 2 *Inſt.* 146. 2 *Rol.* 835. *l.* 10. *Co. Ent.* 604. *b.* 2 *Cro.* 216.

But to be without Impeachment, is a Privilege annexed to the Eſtate, and if the Eſtate is changed by Confirmation, or otherwiſe, it is gone. 1 *Rol.* 183.

But a Grant to a Leſſee, without Impeachment of Waſt, is not good, if it is not by Deed. 2 *Inſt.* 146.

If it be not by the ſame Deed, by which he leaſes; for, by another Deed, it amounts to a Covenant. 1 *Rol.* 183.

So, if a Tenant in Tail grants that the Leſſee ſhall be without Impeachment, it does not bind his Iſſue, tho' he accepts the Rent. *Ibid.*

So a Leaſe, with all Trees, Timber, Sales of Wood, *&c.* is not without Impeachment. *R. Hob.* 234.

So a Grant, that the Leſſee *Commodum faciet meliori Modo quo ſibi viderit, &c.* does not amount to *without Impeachment*. *Hob.* 159.

(E. 4.) If done by Default in the Leſſor.

So it does not lie, if the Waſt be done or occaſioned by the Leſſor himſelf: As, if Trees are cut, *&c.* by the Leſſor, or his Command. 2 *Rol.* 822. *l.* 12.

If the Leſſor cuts down, *&c.* Quickſet or other Fence, by which Cattle eſcape into a Wood demiſed, and deſtroy the *Germins* there. *R.* 2 *Rol.* 822. *l.* 5.

If the Leſſor cuts down Trees, and afterwards the Leſſee's Cattle deſtroy the *Germins* of them. *Per* 2 *J. Mo.* 9.

If the Leſſor does not allow groſs Timber, when there is not ſufficient upon the Land, and the Decay is not by Default of the Leſſee. *Semb. per* 2 *J. Mo.* 7.

So it does not lie, if the Leſſor accepts a Surrender from the Leſſee, after the Waſt. 2 *Inſt.* 304.

(E. 5.) Or by Tempeſt or Enemies.

So it does not lie, if the Waſt was by Tempeſt, Lightning, *&c.* if it be repaired in convenient Time. *Co. L.* 53. *a.* 10 *Co.* 139. *b.*

Or by the King's Enemies. *Co. L.* 53. *a.* 2 *Inſt.* 303.

(F) Penalty for Waſt.

(F. 1.) Done by Guardian in *Chivalry*.

BY the *St. M. Ch.* 9 *H.* 3. 4. *Cuſtos Terræ, &c. capiat niſi rationabiles Exit' &c. et hoc ſine Deſtructione eſt Vaſto Hominum et Rerum. Et ſi Nos commiſerimus Cuſtodiam, &c. Nos ab eo capiemus emendas, &c. Si dederimus, &c. Cuſtodiam, et ille Deſtructionem fecerit aut Vaſtum, amittat illam Cuſtodiam, &c.* And this was confirmed by the *St. W.* 1. 21.

And therefore, if a Guardian in *Chivalry* had committed Waſt, where he did not claim by the King's Grant or Commiſſion, yet he ſhould loſe his Cuſtody. *Vide Stat. W.* 1. 21. *Co. L.* 53.

If the King had the Wardſhip, and committed, or granted it to another, the King might take Amends for the Heir. 2 *Inſt.* 13.

If the King had not taken Amends, an Action for Waſt lay by the Heir. 2 *Inſt.* 13.

If the Heir, in Ward, had brought an Action within Age, the Guardian loſt his Cuſtody. *Co. L.* 54. *a.*

If at full Age he recovered Damages only. *Ibid.*

And by the *St. Glo.* 5. he ſhould recover Treble Damages; for by that Statute Treble Damages are annexed to the Action for Waſt. 2 *Inſt.* 13, 306.

So the Guardian ſhall now loſe the Cuſtody and treble Value of the Waſt, and ſhall be fined to the King. 2 *Inſt.* 300.

But the Guardian ſhall loſe the Cuſtody of the Land only, not of the Body. 2 *Inſt.* 14.

And by the *St. Glo.* 5. The Heir ſhall recover Damages only where the Wardſhip is not ſufficient for the Value of the Waſt. 2 *Inſt.* 306.

(F. 2.) Done by Tenant by Curteſy, Dower, for Life, or for Years.

By the *St. Marlb.* 52 *H.* 3. 23. *Firmarii, &c. Vaſtum, Venditionem, vel Exilium non facient, &c. Quod ſi fecerint et ſuper hoc convincantur, Dampna plena reſtituant, et per Miſericordiam graviter puniantur.*

By the *St. Glo.* 6 *Ed.* 1. 5. Loſe the Thing waſted, and make amends of Treble the Value at which the Waſt ſhall be taxed.

And therefore, where by the Common Law, Tenant by Curteſy and in Dower anſwered only for the Value of the Waſt, and had a *Cuſtos* aſſigned to him to prevent Waſt being afterwards done. 2 *Inſt.* 300.

Since the *St. of Glo.* As well Tenant by Curteſy and in Dower, as Leſſee for Life or Years, ſhall loſe *Locum vaſtatum* and treble Damages.

If Waſt be done *Sparſim* in ſeveral Parts of a Houſe, the whole Houſe ſhall be forfeited. 2 *Inſt.* 303. *Co. L.* 54. *a.*

So if it be *Sparſim* in the whole Wood; for otherwiſe *Locus vaſtatus* and the Reſidue of the Wood would be enjoyed by the Leſſor and Leſſee, which would occaſion mutual Treſpaſſes by one upon the other. 2 *Inſt.* 304.

So, if a Meadow be converted to Tillage *Sparſim* through the Whole. 2 *Inſt.* 304.

So, if Waſt be aſſigned in the Hall of a Houſe, the whole Houſe ſhall be forfeited; for it is the principal Part of the Houſe, and it cannot be well divided from the Houſe. *Cont. Co. L.* 54. *a. Acc. per Noy, Dy.* 272. *b. in Marg.*

So, if Waſt be in the Kitchen, *&c.* of a Caſtle; for the Caſtle cannot be divided. *Dy.* 272. *b. in Marg.*

So the Leſſor may waive *Waſt* againſt the Leſſee, and maintain *Trover* againſt him, who took Trees cut down during the Term. *R. per* 3 *J. Cro. cont. Cro. Car.* 242.

But, if the Place, in which the Waſt was committed, may be conveniently divided from the Reſidue, that only ſhall be recovered: As, if the Part of a Wood, where the Waſt was, may be ſeparated from the other. 2 *Inſt.* 304. *Co. L.* 54. *a.*

So, if Waſt be aſſigned in throwing down, *&c.* the Pales of a Park, *&c.* if it does not appear that there were Deer there, or that they were diſperſed, the Plaintiff ſhall recover only ſo much of the Place, as where the Pales were ſtanding. *R.* 2 *Rol.* 836. *l.* 10.

So, if Waſt is aſſigned in three Acres and found only in One, the Plaintiff ſhall recover but One, tho' the Defendant pleads a Plea, which amounts to a Forfeiture of the Whole; as, if he claims the Fee. 2 *Inſt.* 305.

If *Waſt* be brought in the *Tenet*, the Plaintiff, generally, ſhall recover *Locum vaſtatum*, and treble Damages. 2 *Inſt.* 304.

If Parceners leaſe to *A.* who commits Waſt, one Parcener has Iſſue and dies, *A.* commits freſh Waſt, in an Action for both Waſts, by the Aunt and Niece, they

they ſhall have Judgment for the Place waſted and treble Damages for the laſt Waſt, and the Aunt ſhall have a ſeparate Judgment for Treble Damages for the firſt Waſt. 2 *Inſt.* 305.

But if *Waſt* be brought in the *Tenuit*, (as where the Eſtate of the Leſſee is determined by Effluxion of Time, or the Act of God, or *Tort* of the Tenant, as by Forfeiture, *&c.*) the Plaintiff ſhall recover Damages only. 2 *Inſt.* 304.

So if the Leſſee's Eſtate determines *pendente Lite*; for the Action does not abate. 2 *Inſt.* 304.

If a Leaſe be to *A.* for Life, Remainder to a Woman for Years, and they intermarry, if the Reverſioner brings *Waſt* againſt them, he ſhall recover both Eſtates. 2 *Leo.* 7.

As to Proceſs, Count, Pleas, View and Judgment in *Waſt*, *Vide* in *Pleader*, (3 O. 1, &c.)

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WRECK.

(A) Wreck, Flotſan, Jetſan, what ſhall be.

WRECK is, where Goods after Shipwreck are thrown upon the Land, and no Man, Dog, or other Animal eſcapes alive out of the Ship. 2 *Inſt.* 166.

Flotſan is, where Goods, after Shipweck, lie floating or ſwimming upon the Top of the Water. *Bl. Nom. Verb. Flotſan.*

Jetſan is any Thing caſt out of the Ship, being in Danger of a Wreck, and beaten to the Shore by the Waves, or caſt on it by the Mariners. *Bl. Nom. Verb. Flotſan.*

But, if any Animal eſcapes alive to Land, it will not be a *Wreck*, for a Dog and Cat are only ſpecified as Examples. 2 *Inſt.* 167.

So

So the King's Goods ſhall not be a *Wreck*, if the Property be proved at any Time. 2 *Inſt.* 168.

So, if a Ship, being in Diſtreſs, all deſert her, and any one come alive to Land, tho' the Ship afterwards periſhes, there will be no *Wreck*. 2 *Inſt.* 167.

So, if a Ship be purſued by Enemies, and all the Mariners to ſave their Lives deſert the Ship and come to Land, and the Ship is ranſacked by the Enemies, and afterwards put to Sea and there periſhes, it will be no *Wreck*. *Ibid.*

So, if a Ship, being in a Tempeſt, cuts its Cable, the Anchor is not *Wreck*. 2 *Rol.* 159.

By the *St. W.* 1. 3 *Ed.* 1. 4. (which is only a Declaration of the Common Law) the Things muſt be kept by View of the Sheriff, Coroner, King's Bailiff, *&c.* and bailed in the Hands of thoſe of the Town where found, and if any one proves Property within a Year and a Day, they ſhall be reſtored to him, without Delay; if not, they remain to the King. *Vau.* 164.

And *Wreck* belongs to a Subject by Grant or Preſcription. 2 *Inſt.* 168.

In which Caſe the Sheriff, *&c.* muſt deliver the Goods to the Grantee. *Ibid.*

If the Sheriff, *&c.* does not do it, he ſhall be impriſoned and fined at the King's Will, and render Damages. 2 *Inſt.* 166, 168.

If the Goods are not kept by the Sheriff, but taken away by the Neighbours, the Owner ſhall have a Commiſſion of *Oyer* and *Terminer* to inquire of the Treſpaſs, and to make Reſtitution. 2 *Inſt.* 168.

But, if the Goods found are *Bona peritura*, the Sheriff may ſell them within the Year. 2 *Inſt.* 168.

The Year and Day, within which the Owner may prove his Property, ſhall be computed from the Seiſure, as *Wreck*. 2 *Inſt.* 168.

And if the Owner dies within that Time, his Executor or Adminiſtrator may prove his Property. 2 *Inſt.* 168.

Goods, which are *Wreck*, pay no Cuſtoms. *R. Vau.* 161, *&c.*

[By *St.* 26 *G.* 2. *c.* 19. Stealing from Wreck, wounding any Perſon wrecked, or obſtructing his Eſcape, or putting out falſe Light, is Felony without Clergy.]

[But for Goods of ſmall Value caſt on Shore, and ſtolen without Circumſtances of Cruelty, Offender may be indicted and puniſhed for Petty Larceny.]

[Juſtice may iſſue ſearch Warrant for wrecked Goods; or Goods offered to Sale, ſuppoſed wrecked, may be ſtopt, and Juſtice may commit Offender for ſix Months, or till Payment of Treble Value.]

[Perſons ſaving Goods, and giving Notice, or diſcovering concealed Goods, intitled to Salvage.]

[When a Veſſel is ſtranded, the neareſt Juſtice, *&c.* ſhall give Notice for a Meeting of Sheriff, Juſtices, *&c.* to give Aſſiſtance, and adjuſt Salvage.]

[If the Salvage is not paid, Officers of Cuſtoms may ſell Goods to pay it.]

[On Oath of Plunder, Theft, or Breaking Ship, made and delivered to Clerk of Peace, he ſhall proſecute, on Pain of 100*l.* The Charges to be paid by Treaſurer of County.]

[Perſons aſſaulting Officers employed in Salvage, ſhall be tranſported for Seven Years]

[Perſons employed ſhall act under the Orders of Maſter, Owners, Officer of Cuſtoms, of Exciſe, Sheriff, Juſtice, Mayor, Commiſſioner of Land-Tax, Chief Conſtable, Petty-Conſtable; on Pain of 5*l.* or three Months Commitment.]

[The Ship's Name, *&c.* ſhall be ſent on Oath to Secretary of Admiralty, and publiſhed in *Gazette*.]

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FINIS.